

# Legal Feminism and the Post-Racism Fantasy

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*En 1993, la Revue Femmes et Droit publiait un numéro spécial sur le racisme afin de «changer les paradigmes» du savoir juridique féministe au Canada. Le présent article étudie les articles publiés dans la revue depuis ce temps pour savoir dans quelle mesure cette aspiration s'est concrétisée. Bien que certains progrès aient été réalisés, les féministes ne théorisent pas automatiquement le racisme et le colonialisme. Cette théorisation n'est entreprise que lorsque les questions en jeu sont considérées comme importantes par les femmes racialisées. L'auteure se demande pourquoi les féministes, et en particulier les féministes de race blanche, n'intègrent toujours pas les effets du racisme et du colonialisme dans leurs écrits, et elle observe les conséquences potentielles de ce choix. Elle soutient qu'en ignorant le rôle du racisme et du colonialisme dans le savoir juridique, on perpétue les systèmes de domination que le féminisme devrait éliminer fermement, ce qui entrave le projet féministe. Enfin, l'auteure va jusqu'à se demander si des théories qui ne font pas d'analyse sérieuse du rôle du racisme, du colonialisme et d'autres formes d'oppression peuvent encore être considérées comme féministes.*

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*In 1993, the Canadian Journal of Women and the Law published a special issue on racism in an effort to “shift paradigms” in feminist legal scholarship in Canada. This article examines scholarship published in the journal since that time to evaluate to what extent this aspiration has been realized. Although some progress has been made, feminist theorizing around racism and colonialism is not being undertaken as a matter of course. Rather, this theorizing is pursued most often when an issue has obvious significance to racialized women. The author explores why feminists, and white feminists in particular, still do not regularly integrate the impact of racism and colonialism into their writing and the potential consequences of this choice. She argues that ignoring the role of racism and colonialism in legal scholarship perpetuates systems of domination, which feminism should be aggressively*

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*dismantling and thus impedes the feminist project. The author ultimately questions whether theorizing without meaningful analysis of the role of racism, colonialism, and other sites of oppression can still be considered feminist.*

It is an act of love to take someone at her word, to expect the most out of a woman who calls herself a feminist—to challenge her as you yourself wish to be challenged.<sup>1</sup>

Not that long ago, I was asked to meet with the organizers of a women's conference. As the lone racialized woman in the room, and the only person with any expertise on racism, I was presumably invited to suggest ways in which the program could incorporate critical race perspectives. Most, if not all, of the women present identified as feminists, yet I was very careful about how I addressed the issue of racism. Following what I considered to be a benign contribution on my part, two of the more senior women at the table became agitated and defensive and began aggressively to attack the legitimacy of my comments. One of the other white women, clearly stunned by the reaction, gently attempted to clarify my position to the two senior women, but to no avail. I remained calm as I endeavoured to address their concerns. Everyone else in the room was visibly uncomfortable and quiet. As I endured the humiliation of that moment, I wondered how anyone could consider it appropriate to behave towards an invited guest with such open hostility. Interestingly, two women approached me privately after the meeting to express their agreement with my position and to share their outrage over the way I was treated. A few days after the meeting, I received an apology from the group that invited me. We discussed what we could do to prevent such an incident from happening again—another private response to my public harm.

My experience was not extraordinary by any measure. I imagine that any racialized woman in a room full of white men and women knows first-hand the risks of speaking about racism in such a context. The white women who have benefited the most and for the longest from employment and education equity are the ones whose silence I often find deafening in conversations about racism.<sup>2</sup> I have grown

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1. Cherríe Moraga and Gloria Anzaldúa, "And When You Leave, Take Your Pictures with You: Racism in the Women's Movement" in Cherríe Moraga and Gloria Anzaldúa, eds, *This Bridge Called My Back: Writings by Radical Women of Color*, 2nd edition (New York: Kitchen Table, 1983) 59 at 62.
  2. See, for example, Malinda S Smith, "Gender, Whiteness, and 'Other Others' in the Academy" in Sherene Razack, Malinda Smith, and Sunera Thobani, eds, *States of Race: Critical Race Feminism for the Twenty-First Century* (Toronto: Between the Lines, 2010) 37. For a discussion of white women's resistance to supporting affirmative action in the United States despite having benefited personally from such initiatives, see Tim Wise, "Is Sisterhood Conditional?: White Women and the Rollback of Affirmative Action" (1998) 10:3 *National Women's Studies Association Journal* 1; Sumi Cho, "Understanding White Women's Ambivalence towards Affirmative Action: Theorizing Political Accountability in Coalitions" (2002) 71 *University of Missouri-Kansas City Law Review* 399.

accustomed to encountering resistance and hostility when speaking about racism. I have even learned to express my views in ways that are perceived as less threatening. Yet I have never gotten used to the silence. I am most disappointed when that silence comes from white women who call themselves “feminists.”

Patricia Monture, a path-breaking Indigenous scholar, also found feminists and feminism more generally to be troubling at times. Our shared experiences of the exclusionary, universalizing, and subordinating tendencies of feminism opened a frank and spirited discussion between us following a talk I delivered entitled “Going Postal: Reflections on Feminism in a Post-Feminist, Post-Racial Era” at a conference celebrating fifty years of feminist legal activism. My presentation, inspired by a series of frustrating and painful encounters with white women who self-identified as feminists, questioned whether a woman could be considered a feminist today without also being actively anti-racist in her beliefs and practices. I discussed the commonplace denial by white feminists of the enduring significance of racism and the personal insult that many white women perceive even in challenges of institutional racism. I framed my presentation as a “back to basics” refresher to remind (implore) us to keep the topic alive in feminist discourse.

This topic was an important one to Trish and revisiting it for this special issue struck me as a meaningful way to remember her. For both of us, feminism has little import if it does not aggressively attempt to undermine racism and colonialism. In this pursuit, space must be created for Aboriginal and other racialized women to speak about racism and colonialism, and such discussions need to be heard by white women who benefit from these relations of domination. Furthermore, although some white women have taken up the challenge of introspection about their continued role in the oppression of racialized women, more must be done. These analyses must be incorporated faithfully and thoughtfully into all feminist scholarship and advocacy as part of the “public response” to the “public harm” of racism and colonialism. Given its critical role in “[t]he creation and dissemination of collective knowledge,” scholarship is an important site from which to respond meaningfully and constructively to racial and colonial domination.<sup>3</sup>

Academic work critiquing the privileging of white women’s experiences and voices burgeoned in the 1980s and 1990s, resulting in a greater awareness of the importance of recognizing racism in feminist thought. Pioneers in critical race feminism, including Kimberlé Crenshaw, Angela Harris, Sherene Razack, and many others, exposed the universalizing of white women’s experiences and cautioned against treating sexism, racism, classism, and other sites of oppression as discrete systems of domination. Rather, these scholars beseeched feminists to grapple with the interlocking relations of domination that shape women’s experiences. In 1993, the *Canadian Journal of Women and the Law (CJWL)* published a special issue

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3. Mari Matsuda, “Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground” (1988) 11 *Harvard Women’s Law Journal* 1 at 8.

entitled “Racism: Talking Out” in an effort towards “shifting paradigms” in feminist legal scholarship in Canada.<sup>4</sup> Yet how much has really changed in feminist legal scholarship and praxis since that time? Do considerations of racism and colonialism, frequently relegated to a cursory mention in a footnote, now form an integral part of feminist theorizing?

This article will attempt to address these questions by considering scholarship published in the *CJWL* since that special issue just over twenty years ago. My sense is that although we have made some progress, theorizing around racism and colonialism tends to be pursued most frequently when there is an explicit racial issue and most often by racialized women. However, this analysis is not being undertaken as a matter of course. In this article, I will explore how and why feminists, and white feminists in particular, still do not regularly integrate the impact of racism and colonialism into their writing. Is it because they do not feel adequately equipped to do so? Are white feminists still invested in the primacy of sexual oppression in its fostering of a notion of “sisterhood,” or do many simply have difficulty recognizing the relevance of racism and colonialism? How is white supremacy maintained by the erasure of race and racism in legal scholarship, and how do white women benefit from not recognizing the centrality of racism? Can theorizing, without meaningful analysis, about the role of racism, colonialism, and other sites of oppression still be considered feminist?

In the first part of this article, I briefly review some of the early literature that advocated a more integrated approach to feminist scholarship and activism. In the second section, I examine articles published in the *CJWL* since the special issue in 1993 to examine whether and how authors have addressed racism and colonialism in their work. Given the dearth of feminist discourse that incorporates these considerations in the *CJWL*, in the third and fourth parts of this analysis, I explore why white women (and some racialized women) avoid engaging with these issues and the potential consequences of this choice. In the final section, I consider what feminists can do to ensure that feminist legal scholarship is more complete and promotes an anti-subordination agenda. I will argue that ignoring the role of racism and colonialism in legal scholarship perpetuates systems of oppression that feminism should be actively and relentlessly dismantling. It also impedes the feminist project, which requires the eradication of all systems of domination. Ultimately, I will conclude that the best way to honour Trish Monture, a remarkable woman and scholar, is to use her work and the writing of other racialized women and to apply a critical race analysis in each of our endeavours, not only where there is an obvious connection to racism and colonialism. Feminist legal discourse must evolve for it to be relevant and compelling in the struggle for change.

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4. Patricia Monture, Esmeralda Thornhill, and Toni Williams, “After Words” (1993) 6 *Canadian Journal of Women and the Law* 224 at 226 (as quoted by Thornhill).

## *The Evolution of Feminist Legal Scholarship*

Feminist legal scholarship has flourished in the last few decades in Canada and elsewhere. As it has developed, there has been an increasing awareness of the need to complicate feminist understandings of gender oppression through an intersectional analysis. A critical and influential body of work has emerged that has identified the shortcomings of traditional feminist literature and practice that privileges the experiences of white, heterosexual, able-bodied women from dominant economic classes. In response to the marginalization of racialized women's experiences in particular, critical race feminists have persuasively argued against universalizing white women's experiences and have encouraged an analysis that explores the entanglement of racism and sexism in the lives of racialized women.<sup>5</sup> Both racial and gender essentialisms are criticized as being derived from "the second voice, the voice that claims to speak for all."<sup>6</sup> These authors warn against treating multiple locations of oppression in an additive manner.<sup>7</sup> Racialized women are not simply "white women only more so."<sup>8</sup> Their oppressions cannot be divided into neat categories; rather, sexism and racism are inextricably linked and result in experiences of subordination that are qualitatively unique.

Without a fuller understanding of the ways in which sexism operates in tandem with other institutions of oppression, such as classism, racism, colonialism, ableism, and heterosexism, systems of domination remain intact. As Razack argues, the intent is not simply to include the perspectives of all women; rather, the objective is anti-subordination.<sup>9</sup> Feminist aspirations are defeated if the multitude of

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5. See Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) University of Chicago Legal Forum 139; Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 Stanford Law Review 1241; Angela P Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stanford Law Review 581; Esmeralda Thornhill, "Focus on Black Women!" (1985) 1 Canadian Journal of Women and the Law 153; Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993) 19 Queen's Law Journal 179; Sherene Razack, "Speaking for Ourselves: Feminist Jurisprudence and Minority Women" (1990-1) 4 Canadian Journal of Women and the Law 440; Paulette M Caldwell, "A Hair Piece: Perspectives on the Intersection of Race and Gender" (1991) Duke Law Journal 365.
  6. Harris, *supra* note 5 at 588.
  7. As Harris notes, "[t]he result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems." *Ibid* at 588-9. See also Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York: Routledge, 1991) at 225; Sherene Razack, "Beyond Universal Women: Reflections on Theorizing Differences among Women" (1996) 45 University of New Brunswick Law Journal 209 at 211; Elizabeth V Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988) at 114-32.
  8. Harris, *supra* note 5 at 595.
  9. Sherene Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 159; Sherene Razack, "Race, Space, and Prostitution: The Making of the Bourgeois Subject" (1998) 10 Canadian Journal of Women and the Law 338 at 340.

ways in which women's interests are marginalized and subordinated are not recognized and addressed. This pursuit requires women from positions of dominance to interrogate their own role in the subordination of other women, not only the role of men in oppressing women.<sup>10</sup> Josée Bouchard, Susan Boyd, and Elizabeth Sheehy have recognized that for scholarship to be considered feminist it must assume "some measure of inequality between women and men, *and among women*, and evinces a commitment to eliminating that inequality."<sup>11</sup>

### *The Colour of the CJWL*

In response to an increasing awareness of the impact of racialization on feminist legal scholarship, the *CJWL* issued a call for papers for the special issue on racism to be published in 1993:

Recognizing (1) that feminist discourse is incomplete without examination of the role of racism in the law and (2) that the voices, concerns, and scholarship of racially identified women (First Nations, Black, and immigrant women) have been under-represented in legal literature, the *Canadian Journal of Women and the Law* is inviting submissions . . . which will be devoted exclusively to race, cultural differences, and the law.<sup>12</sup>

The special thematic issue was to "redress the profound imbalance in legal publishing," a response to the paucity of feminist legal scholarship that considers the importance of race and racism and extraordinarily features only works written by racialized and Aboriginal women.<sup>13</sup> All editorial decisions for "Racism: Talking Out" were made by Aboriginal and other racialized women on the editorial board of the journal at that time, which included Trish. The result was an exciting volume of thoughtful and provocative works on topics such as the challenges of framing discrimination claims for racialized women, racism in legal education, the implications of abortion rights for other feminist issues, the capacity of law to serve as a tool for the liberation of Black communities in Canada, legal issues facing Aboriginal women, and the role of feminism in addressing them, among several others. As

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10. See, for example, Mary Louise Fellows and Sherene Razack, "The Race to Innocence: Confronting Hierarchical Relations among Women" (1997-8) 1 *Journal of Gender, Race and Justice* 335.

11. Josée Bouchard, Susan B Boyd, and Elizabeth A Sheehy, "Introduction" (1999) 11 *Canadian Journal of Women and the Law* xv at xv [emphasis added]. Consistent with general trends, this conceptualization of feminist scholarship had significantly evolved from the more expansive definition adopted in the 1986 bibliography by Boyd and Sheehy ("scholarship which takes into account a woman's perspective or interests"). Susan B Boyd and Elizabeth A Sheehy, "Feminist Perspectives on Law: Canadian Theory and Practice" (1986) 2 *Canadian Journal of Women and the Law* 1 at 2.

12. "Call for Manuscripts" (1990-1) 4 *Canadian Journal of Women and the Law* 623 at 623.

13. "Editorial" (1993) 6 *Canadian Journal of Women and the Law* v at v.

explained in its introduction, the special issue was intended only as a beginning in the “C.J.W.L.’s ongoing commitment to publish feminist analyses of law that take account of differences among women and of the multiple biases—of race, class, heterosexism, able-bodiedness, among others—that make law and legal institutions oppressive to women.”<sup>14</sup>

Twenty years later, it seems appropriate to evaluate the progress that has been made in upholding that commitment as the *CJWL* embarks on another thematic volume of works by Aboriginal and non-Aboriginal racialized scholars on issues of racism and colonialism. In what ways has legal scholarship evolved to reflect a more complete feminist analysis that incorporates the multiple ways in which women are subordinated and privileged?<sup>15</sup> Have the changes to feminist discourse aspired to in the last thematic volume been realized? As the only Canadian journal focused exclusively on feminist legal scholarship, whose establishment was viewed as “a defining moment in feminist engagement with law,”<sup>16</sup> the *CJWL* is an obvious place to begin an inquiry about whether feminist legal scholarship in Canada is recognizing the centrality of racism and colonialism.<sup>17</sup>

To make this assessment, I used the electronic database Hein Online to search terms related to “racism” (for example, race, racial, racialize, racialized, racist, racialization) and “colonialism” (for example, colonial, colonized, colonization). I also searched variations of “whiteness.” These terms were more important to my evaluation than specific racial, ethnic, or cultural identifiers of social location such as Aboriginal, Indigenous, Black, Brown, South Asian, Chinese, and so on or even the term “of colour,” as I was especially interested in analyses that explored the systemic nature of racial and colonial oppression. I did, however, use some of these identifiers to see how they would affect my results. I did not employ terms such as “diverse”<sup>18</sup> or “cultural” because, on their own, they are

14. *Ibid.*

15. While I focus on racism and colonialism in this article, feminist scholarship has been slow to consider other locations of oppression as well. I do not wish to suggest that racism and colonialism are the only areas that warrant attention. However, borrowing from the words of Dei and Calliste, an anti-racist project that emphasizes the importance of race will “ensure that a racial analysis is not subsumed under the other axes of multiplex identifications and relations of difference as we continue to draw the trajectories of difference.” George J Sefa Dei and Agnes Calliste, eds, *Power, Knowledge and Anti-Racism Education: A Critical Reader* (Halifax: Fernwood Publishing, 2000) at 15.

16. “Editorial” (2005) 7 *Canadian Journal of Women and the Law* i at ii. This issue celebrated the twentieth anniversary of the *Canadian Journal of Women and the Law* (*CJWL*).

17. Of course, feminist legal scholarship can be found in a number of Canadian legal and non-legal journals as well as monographs. Many of these other sources offer important and thoughtful intersectional critiques. For example, see Razack, Smith, and Thobani, *supra* note 2; Gayle MacDonald, Rachel L Osborne, and Charles C Smith, eds, *Feminism, Law, Inclusion: Intersectionality in Action* (Toronto: Sumach Press, 2005). This review of the *CJWL* is not intended to provide a complete picture of such scholarship.

18. As Razack explains, “[d]iversity too often conveys an idea of endless variety which quickly descends into a multicultural spiral that leaves dominant cultural norms in place.” Razack, *supra* note 7 at 210.

vague and also void of systemic context. As a result, I considered these terms only where they were analyzed in conjunction with racism or colonialism.<sup>19</sup> I limited my search to English-language articles (primarily) and commentaries (secondarily) between 1993 (Issue 2) and 2011. I excluded case comments, book reviews, and review essays, although I recognize that some of the omitted pieces engage thoughtful interlocking analyses and may also have offered insight into the direction of feminist legal scholarship.<sup>20</sup> My goal was to form a qualitative impression of the progress that feminist legal scholarship has made in advancing critical race and critical Indigenous perspectives, not to provide a complete quantitative snapshot.

My most significant challenge was determining how best to present my findings. My intention was not to “shame” individual scholars for their lack of attention to racism and colonialism nor was it to unduly criticize one of the most progressive legal journals in Canada. Rather, my objective has been to provide a sense of feminist legal scholarship’s strengths and weaknesses in theorizing racism and colonialism so that we can productively forge ahead with an anti-subordination agenda. For this reason, I have decided to minimize references to individual articles of which I am critical of the approach taken. However, where appropriate, I have named authors that I believe offer insightful analytical examples of the myriad, complex, and interlocking systems of domination that both oppress and privilege women in their engagement with law. I have chosen to proceed this way not because I fear the reactions of particular white (and racialized) women who may feel singled out (although certainly this concern is legitimate, particularly for a racialized scholar) but, rather, because I am not persuaded of the value in individualizing problems that are systemic. Focusing on the larger picture of how racism and colonialism are addressed in feminist legal literature in my view is more constructive and provides a more representative picture of the progress we are making as feminists. Of course, this approach has its shortcomings, particularly in terms of the depth of analysis that is possible. For this reason, I do identify a few authors whose work illustrates a number of common trends. My inclusion of some names and not others is not to pass judgment on particular scholars but, rather, to highlight widespread issues more concretely.

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19. See Maneesha Deckha, “Is Culture Taboo? Feminism, Intersectionality, and Culture Talk in Law” (2004) 16 *Canadian Journal of Women and the Law* 14; Sonia N Lawrence, “Cultural (in)Sensitivity: The Dangers of a Simplistic Approach to Culture in the Courtroom” (2001) 13 *Canadian Journal of Women and the Law* 107; Annie Bunting, “Complicating Culture in Child Placement Decisions” (2004) 16 *Canadian Journal of Women and the Law* 137.

20. See, for example, Shahnaz Khan, “Race, Gender, and Orientalism: *Muta* and the Canadian Legal System” (1995) 8 *Canadian Journal of Women and the Law* 249; Erica Chung-Yue Tao, “Redefining Race Relations: Beyond the Threat of ‘Loving Blackness’” (1993) 6 *Canadian Journal of Women and the Law* 455.

## Findings

The search terms “race,” “racism,” “racist,” “racial,” “racialize,” “racialized,” and “racialization” yield 129 English-language articles in total, out of a possible 181 articles published in the *CJWL* during the same period. This number increases somewhat if comments are also included in the tally (141 out of a total of 199). While it appears that more scholars are attempting to integrate a fuller analysis of race and racism into their work, in the substantial majority of articles (74) these terms are mentioned only in passing (often just once or twice), usually as part of a long list of “other” considerations in the text or as a sentence or two in the footnotes. In one piece, the author includes the word “racism” in her title but, curiously, does not address it at all in the text. In the articles that do tackle the issue more substantively (55), a number of patterns are worth noting.<sup>21</sup> First, and not surprisingly, racialized scholars are far more likely to discuss racism and racial inequality than non-racialized scholars.<sup>22</sup> However, again somewhat unremarkably, not all racialized scholars published in the *CJWL* discuss the relevance of racism in their work. In fact, few undertake this analysis at all or do so only summarily.

Racism is most likely to be discussed by both racialized and white women in the context of an issue that has explicit racial dimensions (for example, immigration, religious rights, Aboriginal women’s inequality, domestic work)—situations in which omitting a mention of racism or colonialism would be especially conspicuous. Even in those cases, however, discussions about racism tend to be cursory, as part of the “background scenery.”<sup>23</sup> For example, in the special issue on domestic work, seven out of eleven authors raise the issue of race; however, references tend to be somewhat superficial.<sup>24</sup> For example, several authors note that domestic workers are likely to be racialized or that racial differences between the employer and employee “exacerbate” inequality.<sup>25</sup> In a different issue of the *CJWL*, one author analyzes a case involving a Black woman accused of violence. Racism is mentioned in a sentence as a potentially relevant factor without any elaboration. In discussing a similar case in the same article, the author identifies race as “probably” being another basis for prejudice, without further exploration, when she attempts an intersectional analysis that considers sexuality. Many authors, white and racialized, neglect to discuss the institution of racism even when the topic

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21. In determining this number, I included authors who made a respectable effort to incorporate an anti-racism analysis, even if I ultimately believed that the analysis was weak.

22. In some cases, where an author was not known to me personally, I considered the author’s name to determine that she was racialized. I recognize that this system is not ideal, but I am confident that the general trends I observed are accurate.

23. Razack, *supra* note 5 at 441.

24. (2011) 23:1 *Canadian Journal of Women and the Law*.

25. For example, see Martha Alter Chen, “Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges” (2011) 23 *Canadian Journal of Women and the Law* 167 at 169, 172.

specifically relates to Aboriginal or other racialized women, and instead frame their discussions in “culture” and “cultural difference.”

Some other trends are worth noting. Scholarship on criminal law is more likely to attract an evaluation of racism (26 articles; 5 commentaries) than many other subject matters, particularly in the context of sexual assault (11 articles) and intimate abuse (8 articles). Sexual assault analyses indicate an almost even split between more cursory and more substantive critiques of race and racism. Interestingly, there actually are more substantive engagements with these issues in intimate abuse articles than cursory references (6 and 2, respectively). Race and racism are also fairly regularly considered in equality rights scholarship. Of the twenty articles in this area, eight explore these issues more meaningfully, while twelve contain only passing references. These analyses are pursued more often in works on feminist legal theory (16 articles, half of which engage in a more substantive analysis) and legal history (11 pieces, 6 of which consider race and racism more meaningfully). In contrast, the overwhelming majority of authors (9 of 10) mention race and/or racism only in passing in employment law scholarship. Some contributors, such as Sherene Razack, consistently engage in multidimensional analyses of racism and colonialism in all work that has appeared in the *CJWL*, regardless of the subject matter.<sup>26</sup> However, this approach is clearly the exception.

At first glance and depending on one’s perspective, some of these numbers may sound encouraging (or at least not devastating); however, it is important to bear in mind what this tally means in the larger context of *CJWL* scholarship. Of the 181 English-language articles that I reviewed, only 30 percent of authors (55) engaged in anything more than a cursory examination of race and/or racism. This percentage stays the same when commentaries also are included in the tally (58 articles and commentaries out of a possible 199, or 29 percent). The fact that less than a third of feminist scholars even attempt an exploration of race and racism in their work is troubling, particularly when this number tells us nothing about the quality or depth of the analysis, but only how often it is undertaken.

### *Race, Racelessness, and Racism*

In some cases, the authors hint at the influence of racism but do not actually use the words “racist” or “racism” to describe the larger social context. As Robyn Wiegman notes, “speaking of race is not the same as speaking of or against racism.”<sup>27</sup>

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26. Sherene H Razack, “How Is White Supremacy Embodied? Sexualized Racial Violence at Abu Ghraib” (2005) 17 *Canadian Journal of Women and the Law* 341; Razack, “Race, Space, and Prostitution,” *supra* note 9; Sherene H Razack, “Domestic Violence as Gender Persecution: Policing the Borders of Nation, Race, and Gender” (1995) 8 *Canadian Journal of Women and the Law* 45.

27. Robyn Wiegman, *American Anatomies: Theorizing Race and Gender* (Durham, NC: Duke University Press, 1995) at 186.

Often, the result is awkward and vague prose, consistent with what Eduardo Bonilla-Silva refers to as a “rhetorical incoherence” that increases as the topic becomes more sensitive.<sup>28</sup> Authors may circle around the issue of racism when the topic makes them uncomfortable or attempt an analysis that can only be described as confusing. The less coherent the author is in discussing racism, the more likely that she is distressed by the analysis, possibly because she prefers to avoid the topic, resents having to engage with it, or perhaps even disagrees with an assertion that she feels obliged to make.

For example, the vast majority of contributors who speak about race do not address racism or racial inequality. “Race” as a biological construct has long been discredited; as a social construct, it of course remains salient.<sup>29</sup> Discussing race without identifying the social context of racism risks legitimating biological distinctions that historically have been used to reinforce white supremacy. To illustrate using an earlier piece, one author presumes this biological distinction when she states: “Sex and race, although determined genetically before birth, are socially constructed into gender, class, ethnicity, and culture after birth.”<sup>30</sup> This understanding of race as biological continues to inform feminist scholarship. More recently, a contributor employs the term “race” throughout her piece as a descriptor in her exploration of whether “race” assumes primacy over “gender” in particular feminist discourses.<sup>31</sup> Interestingly, this particular author references critical race theory and clearly indicates an openness to grappling with racism, but never actually names racism as an institution, nor the ways in which it interlocks with other locations of oppression and privilege. As AnnLouise Keating remarks, attempts to “deconstruct ‘race’ often inadvertently reconstruct it by reinforcing the belief in permanent, separate racial categories.”<sup>32</sup> This piece serves as an important reminder of the willingness that many white women may have to interrogate the role of racism in their scholarship, but who perhaps are ill-equipped to do so or are anxious about naming racism directly.

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28. Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States*, 2nd edition (Lanham, MD: Rowman and Littlefield, 2006) at 68. Bonilla-Silva discusses this tendency in speech, but I believe the pattern is also discernible in writing.
  29. See, for example, Ian F Haney López, “The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice” (1994) 29 *Harvard Civil Rights-Civil Liberties Law Review* 1; Neil Gotanda, “A Critique of ‘Our Constitution Is Color-Blind’” (1991–2) 44 *Stanford Law Review* 1; Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (2005) at 11 <[http://www.ohrc.on.ca/sites/default/files/attachments/Policy\\_and\\_guidelines\\_on\\_racism\\_and\\_racial\\_discrimination.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf)>.
  30. Vicky D’Aoust, “Competency, Autonomy, and Choice: On Being a Lesbian and Having Disabilities” (1994) 7 *Canadian Journal of Women and the Law* 564 at 565.
  31. Caroline Dick, “A Tale of Two Cultures: Intimate Femicide, Cultural Defences, and the Law of Provocation” (2011) 23 *Canadian Journal of Women and the Law* 519.
  32. AnnLouise Keating, “Interrogating ‘Whiteness,’ (De)Constructing ‘Race’” (1995) 57 *College English* 901 at 902.

Similarly, in a study about domestic work in the Netherlands, Sarah van Walsum includes a section entitled “Race,” in which she discusses how women from the Philippines are viewed as more desirable than Ghanaian workers and consequently can negotiate better compensation and conditions for their services.<sup>33</sup> While she recognizes race and ethnicity as “structuring factors” in this distinction, she does not explore the way in which each group is racialized or situated in the context of racism. Rather, she uses citizenship/nationality as a proxy for “race,” which is tacitly depicted as biologically marked. The reader is left to fill in the gaps with her own interpretation of “Filipino” and “Ghanaian” in terms of race and racialization. However, as Wiegman asks, “can we assume that the contents of categories like race and class (indeed even gender) are already historically and culturally known?”<sup>34</sup> The author’s analysis hints at the impact of racism when she speculates that women from the Philippines have a global “reputation” for providing domestic services that enhances their appeal, whereas Ghanaians may be lumped with Nigerians, who are affiliated with criminal activity in the Dutch media. In her characterization, however, the author implies that the Filipino worker enjoys a privileged status because of this reputation (“Ghanaian domestic workers enjoy no such status”)<sup>35</sup> and fails to interrogate how racism informs the conceptualization of Filipino women as suitable caregivers for white families and the entitlement of those families to receive household services from racialized “others.” White domination becomes invisible and naturalized in a relationship that is premised on inequality. Since the Filipino worker is better able to control her working conditions, her oppression is understood to be minimal, despite social structures that provide few viable alternatives for paid work and meagre compensation that is likely inadequate to sustain a family comfortably.<sup>36</sup>

Where an issue does not have an obvious racial dimension (for example, when the parties involved are white), the author may justify her decision not to engage with racism on the basis of insufficient information. For example, Rosemary Auchmuty examines the early experiences of women law students through her creative exploration of college novels. She notes the “obvious gaps” in these fictional works:

They have nothing to say about race or ethnicity in the college context. Certainly, the college population would have been overwhelmingly white and British (with the occasional American or Australian), but it was not

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33. Sarah van Walsum, “Regulating Migrant Domestic Work in the Netherlands: Opportunities and Pitfalls” (2011) 23 *Canadian Journal of Women and the Law* 141.

34. Wiegman, *supra* note 27 at 186.

35. van Walsum, *supra* note 33 at 153.

36. *Ibid* at 152. The author notes that none of her Ghanaian informants earned more than €10 per hour (approximately CDN \$13 per hour), whereas all of the Filipino workers earned more than that amount, with one who had “even managed to charge €15” (just under CDN \$20).

exclusively so. Cornelia Sorabji was by no means the only Indian woman at Somerville, and there were students with Chinese names as well.<sup>37</sup>

This observation is an interesting one. Implicit in Auchmuty's statement is that an analysis of race or ethnicity is not possible or necessary in the absence of a racialized body, perpetuating the notion that whiteness equates to racelessness. To the contrary, the "overwhelming" whiteness of the college women she studies speaks volumes about "race or ethnicity," including the structures of domination that permitted some upper class, white women to access male-dominated educational institutions. Throughout her piece, the author refers to early "women" law students without identifying which women were specifically encompassed within this category. White women, in this way, become all women, without the necessity of a racial identifier. The omnipresence and invisibility of whiteness is especially evident when the author briefly describes Cornelia Sorabji, a real-life Indian woman law student, as a "racial outsider," before lamenting (in a footnote) that no character in any of the novels assumed this role, presumably as an explanation of why race and racism were not deemed relevant to her study. It is only at the end of the article that the author concludes that the fictional works had "nothing to say about race or ethnicity," after spending the remainder of the article discussing the experiences of white women law students in universal terms. As Joanna de Groot explains, our concern is not confined to the impact of racism and colonialism on racialized women but, rather, extends to how these systems of domination create and maintain gendered norms in white women.<sup>38</sup>

The disappearance of whiteness in feminist discourse informs the transmission of knowledge through scholarship. The failure (by white authors) to critique whiteness rigorously in feminist analysis results in what Renée Curry refers to as "writing white":

[W]riting white constitutes writing authored from an acknowledged or unacknowledged white perspective; writing that implies or explicitly delivers the concept of "whiteness" to a text; writing that remains "ignorant" regarding white racial politics internal to and external to the text; and/or writing that employs the word "white" to maintain ideological systems of mastery and dichotomy in the text.<sup>39</sup>

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37. Rosemary Auchmuty, "The Woman Law Student and the Girls' College Novel" (2007) 19 *Canadian Journal of Women and the Law* 37 at 70.

38. Joanna de Groot, "Anti-Colonial Subjects? Post-Colonial Subjects? Nationalisms, Ethnocentrism and Feminist Scholarship" in Mary Maynard and June Purvis, eds, *New Frontiers in Women's Studies: Knowledge, Identity and Nationalism* (Independence, KY: Taylor and Francis, 1996) 31 at 34. For an excellent analysis of white gender norms in the context of marijuana use, see Susan C Boyd, "High: Marijuana, Women, and the Law" (2009) 21 *Canadian Journal of Women and the Law* 35.

39. Renée R Curry, *White Women Writing White: H.D., Elizabeth Bishop, Sylvia Plath, and Whiteness* (Westport, CT: Greenwood Press, 2000) at 2.

Scholarship that fails to recognize and grapple with the centrality of racism leaves historical ways of knowing, premised on racial subordination, undisturbed and generates a “new rhetoric of racism [that] never mentions race.”<sup>40</sup> In this way, white supremacy is perpetuated through academic discourses that silently impose social constructions of whiteness that privilege white women and men. Thomas Nakayama and Robert Krizek suggest that the silencing of whiteness is a “white communication practice” that is reinforced by academic processes that do not engage with whiteness.<sup>41</sup> In this way, the production of knowledge remains decontextualized and static and strengthens structures of inequality rather than dismantling them. As Wiegman notes, feminism “must resist the impulse to reproduce only what it thinks it already knows; it must challenge the compulsion to repeat.”<sup>42</sup>

A significant obstacle to interrogating whiteness lies in its conceptualization. What precisely do we mean by white and whiteness? As Nakayama and Krizek observe, “one can only be white by not being anything else.”<sup>43</sup> Whiteness as a concept is fluid, complex, and problematic, which makes its critique challenging. In an effort to recognize the significance of race and racism in their work, many authors simply identify themselves as white, “as though mere acknowledgement of this fact were sufficient, as though it conveyed all we need to know of standpoint, motivation, direction.”<sup>44</sup> As Anne-Jorunn Berg notes, “the use of identity markers is focused on the individual researcher, not necessarily on knowledge production.”<sup>45</sup> She suggests that we need to “rework whiteness from an identity marker to a relational phenomenon” in order to destabilize the notion of race and to examine its significance in particular areas.<sup>46</sup> To do so, we must historicize and contextualize knowledge.<sup>47</sup> Although some authors in the *CJWL* identify themselves as white, few examine how this location situates their work. In some cases, rather than positioning research, an author’s self-identification as white may instead reinforce fixed, racial categories based on biological difference. For example, Nan Seuffert, in an attempt to acknowledge that she is “raced” as a white woman, dubiously explains that “being white means belonging to the race of white people.”<sup>48</sup>

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40. Patricia J Williams, *Seeing a Color-Blind Future: The Paradox of Race* (London: Virago Press, 1997) at 39.
  41. Thomas K Nakayama and Robert Krizek, “Whiteness: A Strategic Rhetoric” (1995) 81 *Quarterly Journal of Speech* 291 at 303.
  42. Robyn Wiegman, “What Ails Feminist Criticism? A Second Opinion” (1999) 25 *Critical Inquiry* 362 at 371.
  43. Nakayama and Krizek, *supra* note 41 at 299.
  44. bell hooks, *Yearning: Race, Gender, and Cultural Politics* (Toronto: Between the Lines, 1990) at 54.
  45. Anne-Jorunn Berg, “Silence and Articulation: Whiteness, Racialization and Feminist Memory Work” (2008) 16 *Nordic Journal of Feminist and Gender Research* 213 at 215.
  46. *Ibid.*
  47. *Ibid.*, reviewing the work of scholars in feminist epistemology.
  48. Nan Seuffert, “Hanging Out at the Gap: A Dialogue Reading of Experiences of Survivors of Domestic Violence with Legal Representation” (1995) 8 *Canadian Journal of Women and the Law* 290 at 314.

## Colonialism

The search for articles that contain references to colonialism generates even fewer results (50), with all but one article overlapping with the race and racism query. I included the search terms colonial, colonizer, de/colonize, de/colonized, and de/colonization.<sup>49</sup> Adding the terms Aboriginal, Indigenous, First Nations, and “Indian” expands the findings slightly, but even then the scholarship on issues facing Aboriginal women (and men) is minimal. Similar to racism, references to colonialism tend to be in passing or in a footnote without any substantive analysis. Moreover, most of the relevant scholarship is written by Aboriginal and other racialized women.<sup>50</sup> Puzzlingly, one (white) author engages in a thoughtful analysis of racism and colonialism in one piece that discusses Aboriginal women but fails to even acknowledge these institutions of oppression and privilege in another.

“Colonial” as a search term yields a considerable number of results. However, the term often is used to describe the historical rule in non-Canadian contexts, particularly in Africa.<sup>51</sup> Very little scholarship addresses colonialism in Canada. Even when scholars discuss Aboriginal women, most authors focus instead on culture and cultural differences. This omission resembles the articles in which authors address race and culture without situating the discussion in the context of racism and white supremacy. Focusing on cultural difference minimizes the role of structural inequalities in the subordination of Aboriginal communities. Rather, cultural difference suggests that marginalized groups share an equal position with dominant groups (for whom culture is invisible); any social and economic disparity can be explained by diverging values and worldviews—“cultural clashes.” Overall, the meagre feminist legal scholarship on Aboriginal women is depoliticized.

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49. I excluded all results that used colonization in a non-racial or non-Indigenous context.

50. For examples that meaningfully engage with colonialism, see Sharon Donna McIvor, “Aboriginal Women Unmasked: Using Equality Litigation to Advance Women’s Rights” (2004) 16 *Canadian Journal of Women and the Law* 106; Tracey Lindberg, “Not My Sister: What Feminists Can Learn about Sisterhood from Indigenous Women” (2004) 16 *Canadian Journal of Women and the Law* 342; Elizabeth Adjin-Tettey, “Sentencing Aboriginal Offenders: Balancing Offenders’ Needs, the Interests of Victims and Society, and the Decolonization of Aboriginal Peoples” (2007) 19 *Canadian Journal of Women and the Law* 179; Razack, “Race, Space, and Prostitution,” *supra* note 9; Sunera Thobani, “Nationalizing Canadians: Bordering Immigrant Women in the Late Twentieth Century” (2000) 12 *Canadian Journal of Women and the Law* 279. This list is by no means exhaustive.

51. See, for example, Elizabeth Archampong and Fiona Sampson, “Marital Rape in Ghana: Legal Options for Achieving State Accountability” (2010) 22 *Canadian Journal of Women and the Law* 505; Andrew Ubaka Iwobi, “No Cause for Merriment: The Position of Widows under Nigerian Law” (2008) 20 *Canadian Journal of Women and the Law* 37; L Amede Obiora, “The Little Foxes That Spoil the Vine: Revisiting the Feminist Critique of Female Circumcision” (1997) 9 *Canadian Journal of Women and the Law* 46.

### Contributors

Although the number of racialized women published in the *CJWL* appears to have increased since the special issue on racism in 1993, their work is still not appearing regularly. The exception is special issues of the journal that focus on topics of particular concern to racialized women, such as the 1993 issue on racism and the more recent issue on domestic work guest-edited by Adelle Blackett.<sup>52</sup> As noted earlier, including work by racialized women does not ensure that an analysis of racism, colonialism, and white supremacy will be pursued, but it does make it more likely. Given that Aboriginal women's under-representation in the legal profession and in academia is even more pronounced than that of other racialized women, it is not surprising that their work appears the least frequently in the *CJWL* (and undoubtedly in other academic journals). Overall, scholarship on racism and colonialism in the *CJWL* is limited and tends to be written by the same few (Aboriginal and non-Aboriginal racialized) scholars.

### Sources

In the articles that reference racism and colonialism only in passing either in the text or as a footnote, the sources selected to support the relevance of such considerations are illustrative. For example, a few foundational pieces on intersectionality are cited routinely, including the work of Kimberlé Crenshaw<sup>53</sup> and occasionally Angela Harris.<sup>54</sup> Marlee Kline's article on race and feminist legal theory is also referenced regularly.<sup>55</sup> My sense is that it is used more often than Harris's work on race and essentialism, particularly by white women, although this impression is difficult to quantify. This choice could be explained by any number of reasons, including that Kline's piece focuses on the Canadian context and also her unusual willingness to engage with racism as a white woman. However, it also raises important questions about whether the work of a white woman on racism is heard differently by other white women.<sup>56</sup> It is not surprising that her influential piece on racism and feminist legal theory is cited throughout the special issue of the

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52. (2011) 23:1 Canadian Journal of Women and the Law.

53. Crenshaw, "Demarginalizing the Intersection," *supra* note 5; Crenshaw, "Mapping the Margins," *supra* note 5.

54. Harris, *supra* note 5.

55. Marlee Kline, "Race, Racism, and Feminist Legal Theory" (1989) 12 Harvard Women's Law Journal 115.

56. Although Kline's piece considers Canadian issues, her article on racism and feminist legal theory is most often cited for general assertions regarding the relevance of racism, rather than for substantive analyses of Canadian law. As bell hooks asks, "isn't it time to look closely at how and why work by white scholars about nonwhite people receives more attention and acclaim than similar work produced by nonwhite scholars (while at the same time, the latter's work is devalued—for being too "angry"—even as it's appropriated)?" hooks, *supra* note 44 at 55.

*CJWL* dedicated to honour her life and work,<sup>57</sup> but it is interesting that this also seems to be the case in other issues as well.

What is problematic is not that feminist authors in the *CJWL* rely upon these foundational pieces on intersectionality but, rather, how these works tend to be used. The references to intersectionality have for the most part become predictable and uninspired, no more than a routine acknowledgement that women are diverse and that feminist scholarship and advocacy must reflect these differences, consistent with what Harris refers to as the “nuance theory approach.”<sup>58</sup> They read as though feminists copy a prescribed paragraph or footnote from the “feminist manual.” Or put another way, if feminist analysis were a law school exam many scholars would state the “rule” of intersectionality without applying it to the facts. What is lacking is any real engagement with the multiple oppressions and privileges that shape women’s lives, despite many superb examples of intersectionality “in action”—analyses that connect “the general to the particular.”<sup>59</sup> Illustrations of this critical approach can be found inside and outside the *CJWL*. For example, Sherene Razack’s work on Pamela George, an Aboriginal woman working as a prostitute who was killed by two young middle-class white men, brilliantly and methodically unpacks the colonial, racist, sexist, and classist systems of domination that led to her fatal encounter with the two men and the ways in which their responsibility was minimized by the legal system.<sup>60</sup> Her piece on the “sexualized racial violence” at Abu Ghraib similarly engages in a compelling analysis of the complicated ways in which gender, heterosexism, and racism interweave with imperial notions of Western moral superiority to justify the sexualized degradation by American soldiers of Iraqi prisoners.<sup>61</sup> Considering many of the same structures of domination, Sunera Thobani cogently evaluates the impact of racism, colonialism, and imperialism on Western feminist theorizing on the war on terror.<sup>62</sup>

While most feminists who pursue such analyses in the *CJWL* tend to be racialized, white scholars also have attempted an exploration of interlocking systems of domination successfully. For example, using the case of an Aboriginal woman accused of murdering her abusive spouse, Julie Stubbs and Julia Tolmie effectively

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57. (2004) 16 Canadian Journal of Women and the Law. It is noteworthy that most references to this article are cursory, even in the special issue.

58. As Harris, *supra* note 5 at 595, explains: “By being sensitive to the notion that different women have different experiences, generalizations can be offered about ‘all women’ while qualifying statements, often in footnotes, supplement the general account with the subtle nuances of experience that ‘different’ women add to the mix. Nuance theory thus assumes the commonality of all women—differences are a matter of ‘context’ or ‘magnitude’; that is, nuance.”

59. Elizabeth Schneider, “Particularity and Generality: Challenges of Feminist Legal Theory and Practice in Work on Woman Abuse” (1992) 67 *New York Law Review* 520.

60. Sherene H Razack, “Gendered Racialized Violence and Spatialized Justice: The Murder of Pamela George” (2000) 15:2 *Canadian Journal of Law and Society* 91.

61. Razack, *supra* note 26.

62. Sunera Thobani, “White Wars: Western Feminisms and the ‘War on Terror’” (2007) 8 *Feminist Theory* 169.

expose the ways in which battered woman syndrome privileges the experiences of white, middle-class women. The authors examine the ways in which racism, sexism, and colonialism interconnect to shape Aboriginal women's experiences of violence as well as the manner in which courts respond to such experiences.<sup>63</sup> Models of excellent interlocking analyses abound.

The failure to engage with the important work of many Canadian (and non-Canadian) scholars who have built on the foundation that Crenshaw and others established is troubling. Critical race feminist theory has continued to evolve, becoming more complex and sophisticated with each opportunity to interact with new ideas. Even language has become more nuanced to reflect developing discourses. For example, concerns about gender and racial essentialism elicited theorizing on the "intersectionality" of oppressions in feminist and critical race literature. Some scholars have pushed this characterization further, adopting a more intricate understanding of how these oppressions "interlock" and depend on one another. For many critical race scholars, this conceptualization more accurately portrays the complicated ways in which oppressions and privileges are interwoven.<sup>64</sup> While some authors have nurtured and grown the body of literature on intersectionality and interlocking oppressions, other scholars have questioned whether intersectionality remains a useful concept in theory and praxis.<sup>65</sup> In other words, the literature on intersectionality and interlocking oppressions has proliferated in the last twenty-five years; however, many feminist scholars in the *CJWL* (and elsewhere) treat this dynamic body of work as though it has remained static.

### *The Scholarship of Patricia Monture*

Of particular relevance to this article is the impressive body of work produced by Patricia Monture. She wrote on a broad range of topics including legal education, the criminal justice system, child welfare, Aboriginal self-government, and

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63. Julie Stubbs and Julia Tolmie, "Race, Gender, and the Battered Woman Syndrome: An Australia Case Study" (1995) 8 *Canadian Journal of Women and the Law* 122.
64. See Collins, *supra* note 7 at 225-6; Fellows and Razack, *supra* note 10 at 335. For a general discussion on the differences between "intersecting" and "interlocking" analyses, see Razack, *supra* note 26 at 343. Some scholars have discussed the interconnectedness of oppressions in terms of "multidimensionality." See, for example, Kerri A Froc, "Multidimensionality and the Matrix: Identifying Charter Violations in Cases of Complex Subordination" (2010) 25 *Canadian Journal of Law and Society* 21.
65. See Jennifer C Nash, "Re-Thinking Intersectionality" (2008) 89 *Feminist Review* 1; Robert S Chang and Jerome McCristal Culp, Jr, "After Intersectionality" (2002) 71 *University of Missouri-Kansas City Law Review* 485; Nancy Ehrenreich, "Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems" (2002) 71 *University of Missouri-Kansas City Law Review* 251. For a helpful review of a recent book on intersectionality from the United Kingdom, see also Susan B Boyd, "Book Review of *Intersectionality and Beyond: Law, Power and the Politics of Location* by Emily Grabham et al, eds" (2011) 23 *Canadian Journal of Women and the Law* 697.

whether the feminist movement is capable of responding to the needs of Aboriginal and other racialized women (and men). Her scholarship unfailingly and meaningfully grapples with issues of colonialism, sovereignty, and racism and does so directly and unabashedly. In some way or another, every feminist legal scholar and advocate in Canada has been influenced by Trish's work, yet her scholarship remains under-utilized.

Since the *CJWL* began publication in 1985, only four articles and one case comment have engaged with Trish's work in any substantive way. Of these five, three pieces were written by Aboriginal women,<sup>66</sup> one piece by a non-Aboriginal racialized woman<sup>67</sup> and one by a white woman.<sup>68</sup> Four out of five of these commentaries were written in the 1990s (two appeared in the special issue on racism in 1993); the fifth was written in 2006. The vast majority of articles that cite Trish's work have done so only in passing in a footnote among a long list of sources used to support a general proposition. Clearly, a critical resource on racism and colonialism has been neglected to the detriment of feminist scholarship.

### *Has the Paradigm Shifted?*

The earlier overview demonstrates that while feminist scholarship in the *CJWL* on racism may have inched forward since the special issue in 1993, most of the changes have been superficial. Feminist scholarship in the *CJWL* that tackles colonialism or interrogates whiteness remains almost non-existent. By leaving whiteness largely unexamined, feminist scholars in the *CJWL* perpetuate racial privileging through their tacit approval of a norm of whiteness and "unwittingly conspire to secure its invisibility."<sup>69</sup> As such, the lack of critical race analysis in feminist scholarship is not simply a sin of omission but, rather, a representation and perpetuation of white privilege and "white knowledge." Raymie McKerrow, in his explanation of critical rhetoric, reminds us that in understanding text "[a]bsence is as important as presence in understanding and evaluating symbolic action."<sup>70</sup> Similarly, Stuart

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66. Mary Ellen Turpel, "Patriarchy and Paternalism: The Legacy of the Canadian State for First Nations Women" (1993) 6 *Canadian Journal of Women and the Law* 174; Tracey Lindberg, "What Do You Call an Indian Woman with a Law Degree: Nine Aboriginal Women at the University of Saskatchewan College of Law Speak Out" (1997) 9 *Canadian Journal of Women and the Law* 301; Patricia E Doyle-Bedwell, "Evolution of the Legal Test of Extinguishment: From Sparrow to Gitskan" (1993) 6 *Canadian Journal of Women and the Law* 193.
  67. Carol Aylward, "Adding Colour: A Critique of: 'An Essay on Institutional Responsibility: The Indigenous Blacks and Micmac Programme at Dalhousie Law School'" (1995) 8 *Canadian Journal of Women and the Law* 470.
  68. Angela Cameron, "Sentencing Circles and Intimate Violence: A Canadian Feminist Perspective" (2006) 18 *Canadian Journal of Women and the Law* 479.
  69. Nakayama and Krizek, *supra* note 41 at 304.
  70. Raymie E McKerrow, "Critical Rhetoric: Theory and Praxis" (1989) 56 *Communication Monographs* 91 at 107.

Hall notes that “[p]ositively marked terms ‘signify’ because of their position in relation to what is absent, unmarked, the unspoken, the unsayable. Meaning is relational within an ideological system of presences and absences.”<sup>71</sup> Thus, the refusal to engage with the significance of whiteness in feminist theorizing in the *CJWL* does not simply exclude the experiences of racialized women (and men) but serves to reproduce systems of domination that reinforce racial subordination.<sup>72</sup>

The dearth of scholarship on racism and colonialism in the *CJWL* makes it almost impossible to evaluate properly the quality of the work—the inquiry to some extent is limited to whether the work is being done, not how well it is done. As mentioned earlier, an analysis that exposes and challenges racism and colonialism is more likely to be pursued when the topic is clearly connected to racialized women, but even discussions about racialized women often are not situated in the context of racism and colonialism. Anti-racist, anti-colonialist theorizing is not undertaken as a matter of course. In other words, there is no indication that the aspiration of the *CJWL* and the editors of the special issue twenty years ago to “shift” the paradigm of feminist scholarship has been realized. The next section will explore possible reasons why this shift has not occurred.

### *Why the Paradigm Is Not Shifting*

Despite the professed commitment of legal feminists to the eradication of racism and colonialism as an integral part of the feminist strategy, feminist scholarship and practice at its best has reflected only a cautious acknowledgement of these systems of domination. At its worst, the response has been hostile. Feminists, of course, are not immune from the systems of oppression that plague larger society. However, why are we not doing better, especially when we know better? And, in particular, why has feminist legal scholarship, at least in the *CJWL*, not lived up to its own anti-subordination ideals? In my view, there are a number of reasons why white feminists (and some racialized ones) still do not recognize the central role of racism and colonialism in feminist theorizing and practice.

First, and most important in my view, is the investment that white feminists continue to have in their own white privilege. There is nothing novel about this assertion. Yet what is surprising, in my view, is the extent to which this investment has remained intractable despite an apparent commitment to anti-racist feminist objectives. Historically, the feminist movement was shaped by white (heterosexual, upper middle-class, able-bodied) women, the “prototypical feminist,” who sought formal equality with white men with little or no regard to the inequality faced by

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71. Stuart Hall, “Signification, Representation, Ideology: Althusser and the Post-Structuralist Debates” (1985) 2 *Critical Studies in Mass Communication* 91 at 109.

72. While my empirical inquiry was limited to the *CJWL*, I expect that similar patterns exist in feminist legal scholarship published elsewhere in Canada.

women from non-dominant groups.<sup>73</sup> Despite progress made by the feminist movement to become more inclusive, relations of domination within the movement have remained largely intact. White women's relatively new access (however limited still) to power traditionally held by white men has become an obstacle to recognizing and challenging their own unearned advantages relative to racialized women.<sup>74</sup> Access to male privilege, or the desire to access such privilege, directly implicates women in racial domination given that (white) male power is built upon a foundation of racism.<sup>75</sup>

This interest, conscious or subconscious, in reaping the benefits of white skin privilege has manifested itself in a number of related ways in feminist scholarship and practice in response to racism and colonialism. First, and perhaps the most common response, is the avoidance of these issues altogether. Even when a feminist scholar includes a token reference to racism or culture, the effect is still to evade the discussion and to centre the experiences of white women.<sup>76</sup> Without an explicit analysis of the role of racism and colonialism, this scholarship affirms the conceptualization of a universal (white) woman, while paradoxically denouncing (explicitly or implicitly) the legitimacy of gender essentialism in theory. Thus, feminist terminology may have become more sophisticated, but changes in practice have been modest. The ultimate exercise of white privilege is being wilfully ignorant of its existence, or in other words pretending that racism is not a live issue. This wilful ignorance makes it possible for white women from dominant groups to treat sexism as the primary oppression facing women, thus perpetuating practices that feminists and critical race theorists condemned decades ago. In other words, privilege allows women from dominant groups to compartmentalize oppressions in ways that are beneficial to them.

Many well-intentioned white feminists simply avoid confronting racism in their professional and personal lives because they do not feel equipped to engage in the analysis. Afraid they will "get it wrong," these women choose instead to focus on oppressions they experience firsthand as members of the oppressed group with minimal attention to the ways in which systems of domination affect women differently. Fear can shackle feminist legal scholarship, leaving it static, incomplete, and "safe." White feminists who speak about racism risk exposing their ignorance or subconscious biases—it is harder to criticize the substance of an analysis that does not exist. As Deborah Rhodes observes, "[w]hat seems to be plaguing some

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73. Diana Majury, "Women's (In)Equality before and after the *Charter*" in Radha Jhappan, ed, *Women's Legal Strategies in Canada* (Toronto: University of Toronto Press, 2002) 101 at 105-6.

74. I recognize that class and other locations of advantage have played an important role in white women's access to power traditionally held by white men. However, white women of all socio-economic backgrounds enjoy some privilege as a result of their skin colour.

75. Marilyn Frye, *The Politics of Reality: Essays in Feminist Theory* (Freedom, CA: Crossing Press, 1983) at 125.

76. As Wiegman remarks, "[e]ven a sentence that begins with the acknowledgement of the interests of women of colo[u]r has white women as its critical destination." Wiegman, *supra* note 42 at 378.

of our theorizing and much of our practice is an unwillingness to engage critically with our aspirations or anxieties about difference. We aren't advancing the conversation because we'd rather not have it."<sup>77</sup> The luxury of being able to avoid uncomfortable discussions is not one that is available to all women.

Part of the discomfort that many white feminists continue to experience is due to a deep-seated fear that race-consciousness is in itself racist. In other words, colour-blindness in its seeming beneficence remains the liberal aspiration that many feminists have adopted, consciously or subconsciously. Of course, feminists are not alone in this inclination. A point of pride in the Canadian consciousness is our tradition of "tolerance," which translates into a celebrated fiction of not noticing differences, a fiction that is enabled by the myth of multiculturalism and the belief that we now live in a post-racial society.<sup>78</sup> A colour-blind approach to law has been universally rejected by critical race theorists, being referred to as "not only the expression of a particular colo[u]r-consciousness, but the product of a deeply politicized choice."<sup>79</sup> As Neil Gotanda notes, although colour-blindness has been equated with race-neutrality, in reality it is a "disguised form of racial privileging."<sup>80</sup> It is a way of normalizing whiteness by "closeting race."<sup>81</sup> Moreover, Gotanda explains that colour-blindness or "racial nonrecognition" ironically requires first taking note of "race" and then making the conscious decision to ignore it.<sup>82</sup> Although race-

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77. Deborah L Rhodes, "Enough Said" (1991) 4 Yale Journal of Law and Feminism 35 at 35.

78. As Wendy Brown describes "contemporary tolerance discourse," "by converting the effects of inequality—for example, institutionalized racism—into a matter of 'different practices and beliefs,' this discourse masks the working of inequality and hegemonic culture as that which produces the differences it seeks to protect. As it essentializes difference and reifies sexuality, race, and ethnicity at the level of ideas and practices, contemporary tolerance discourse covers over the workings of power and the importance of history in *producing* the differences *called* sexuality, race, and ethnicity. It casts those culturally produced differences as innate or given, as matters of nature that divide the human species rather than as sites of inequality or domination." Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, NJ: Princeton University Press, 2006) at 46-7 [emphasis in original]. For another insightful discussion that scrutinizes "tolerance" and "multiculturalism," see Eve Haque, "Homegrown, Muslim and Other: Tolerance, Secularism and the Limits of Multiculturalism" (2010) 16 Social Identities: Journal for the Study of Race, Nation and Culture 79 at 97 (discussing tolerance in the context of Muslim women in Canada: "the representation of Muslim women's lives and deaths must be cast in ways that confirm a national narrative that, yes indeed, we are a tolerant nation with equal integrative opportunities for all"). See also Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada* (Toronto: University of Toronto Press, 2002) at 5 (criticizing the politics of multiculturalism in Canada and exploring how "'tolerance' is mobilised to manage populations and also to create identities" by dominant groups); Himani Bannerji, "The Paradox of Diversity: The Construction of a Multicultural Canada and 'Women of Color'" (2000) 23 Women's Studies International Forum 537 (examining how discourses of "diversity" and "multiculturalism" define racialized women in Canada).

79. "Foreword" in Kimberlé Crenshaw et al, eds, *Critical Race Theory: The Key Writings That Formed the Movement* (New York: New Press, 1995) xi at xxviii.

80. Neil Gotanda, "Failure of the Color-Blind Vision: Race, Ethnicity, and the California Civil Rights Initiative" (1996) 23 Hastings Constitutional Law Quarterly 1135 at 1139.

81. Williams, *supra* note 40 at 8.

82. Gotanda, *supra* note 80 at 1140. See generally Williams, *ibid.*

consciousness is a core tenet of critical race theory,<sup>83</sup> it appears to have had little influence on most feminist scholarship published in the *CJWL*.

In scholarship and practice, white women may be invested in not disturbing relations of domination that work in their favour. When racism and colonialism are not challenged, white women benefit from being characterized in some way as superior to racialized women. The positive construction of whiteness can only exist in contrast to an inferior racialized other—dominant groups define who they are by what they are not.<sup>84</sup> This good/bad dichotomy is also apparent in how legal scholarship is judged.<sup>85</sup> It has taken a long time and considerable risk on the part of feminist scholars to move feminist writing into the realm of “real” scholarship. Although there is still a long way to go, significant gains have been made in the past few decades to recognize “feminist legal studies” as part of the mainstream.<sup>86</sup> Within feminist work, a perception may exist that some types of research will be afforded more legitimacy by non-feminists. Writing that most closely mimics so-called “black letter” or doctrinal legal scholarship in form and substance may reach the largest audience and attract the most respect. Therefore, feminist scholarship that focuses only on a generalized notion of women’s inequality, without the complications of racism, colonialism, classism, ableism, and heterosexism, may be viewed as the most “scholarly” of a body of literature that is marginalized. Consequently, feminist research that also grapples with racism may be too far removed from traditional scholarship to be viewed as worthy and credible.<sup>87</sup> White feminists who wish to have their work taken seriously by (non-feminist) judges, academics, and lawyers may believe it is in their professional interest to avoid

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83. Crenshaw et al, *supra* note 79 at xxviii-xxix. See also Gary Peller, “Race Consciousness” (1990) *Duke Law Journal* 758.

84. For a discussion of “othering” processes, see Fellows and Razack, *supra* note 10 at 342-4. See also de Groot, *supra* note 38 at 35-6, for an examination of how constructions of Western identity are shaped by casting the “Third World other” as exotic and inferior.

85. For a discussion of the undervaluation of “good” critical scholarship, see Geoffrey R Stone, “Controversial Scholarship and Faculty Appointments: A Dean’s View” (1991) *77 Iowa Law Review* 73 at 73-4.

86. Joanne Conaghan, “Reassessing the Feminist Theoretical Project in Law” (2000) *27 Journal of Law and Society* 351 at 360, n 34. For a more general discussion on the state of feminist scholarship and knowledge, see Meg Luxton and Mary Jane Mossman, *Reconsidering Knowledge: Feminism and the Academy* (Halifax: Fernwood, 2012).

87. For example, US appellate court judge Richard Posner, widely considered one of the most influential and respected legal jurists of the twentieth century, ridicules critical race theory and its use of narratives (referred to by Posner as “childish stories”). In his view, critical race theorists are “whiners” and “wolf-criers” who reveal limited intellectual capabilities and whose “lodgment in the law schools is a disgrace to legal education.” Richard A Posner, “The Skin Trade,” *The New Republic* (13 October 1997) 42-3. See also Matthew H Kramer, “Book Review of *Roscoe Pound and Karl Llewellyn: Searching for an American Jurisprudence* by NEH Hull” (1999) *58 Cambridge Law Journal* 222 at 222 (describing critical race theory as “intellectually flimsy humbug” that appears in US law reviews “because of the ignorance of most journal editors and many faculty members”).

addressing racism and colonialism. The consequence is a type of “segregation” that “conveys the implicit message of the inferiority of the excluded scholarship.”<sup>88</sup>

Closely related to the passive avoidance of racism in scholarship is the tendency in practice to deny racism when it is raised by others. Most contemporary forms of racism manifest in subconscious and systemic ways that are not easy to pinpoint in individual cases.<sup>89</sup> What sort of proof would be compelling to an audience invested in not seeing racism? In theory, we know that it is impossible to separate racism from sexism, and yet, in practice, we seek to neutralize racism by grasping for alternative explanations. The urge to deny racism sidetracks the discussion into whether something is racist, rather than a thoughtful consideration of how racism is embedded in our ideas and practices. This tendency translates into feminist scholarship that considers racism only in the context of whether or not it is pertinent to a particular topic, as usually determined by white women, but not the more challenging and critical question of how racism is relevant. Ignoring the existence of racism or rejecting its relevance absolves white women of responsibility. Even if white women are not racist in their individual practices, they benefit from racist structures and institutions and thus have an obligation as feminists to challenge them.

All of these responses to racism deny the lived realities of racialized women and discourage them from raising issues of racism and colonialism. In effect, the ways in which racism and colonialism are ignored, denied, and minimized by white feminists are types of racial microaggressions that injure and silence racialized women even within the feminist movement. Racial microaggressions have been defined as “brief and commonplace daily verbal, behavio[u]ral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults to the target person or group.”<sup>90</sup> These microaggressions also plague racialized women in the academic institutions in which they write and teach, institutions that racialized faculty must survive (often through assimilation) before they can flourish. Thus, it should not be surprising that even racialized feminists are not consistently producing legal scholarship that interrogates the role of racism and colonialism.

Indeed, the decision not to engage with racism and colonialism in feminist theorizing is in many ways a rational one given the reactions of many white women

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88. Matsuda, *supra* note 3 at 3-4, n 12.

89. See, for example, Derald Wing Sue et al, “Racial Microaggressions in Everyday Life: Implications for Clinical Practice” (2007) 62 *American Psychology* 271 at 272 (describing how “aversive racism” or “implicit bias” are forms of racism that are “difficult to identify, quantify, and rectify because of their subtle, nebulous, and unnamed nature”). See also Rakhi Ruparelia, “‘I Didn’t Mean It That Way!’: Racial Injury as Negligence” in Sanda Rodgers, Rakhi Ruparelia, and Louise Bélanger-Hardy, eds, *Critical Torts* (Markham, ON: LexisNexis, 2009) 81; Charles R Lawrence, III, “The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism” (1987) 39 *Stanford Law Review* 317.

90. Sue et al, *supra* note 89 at 273.

(and men) to these issues. Racialized women risk not only the defensiveness and anger of white women but also the very real possibility of being punished in tangible ways. As Peggy Davis explains, negotiating racial aggressions becomes a “preoccupying activity,” necessary for the psychological and social survival of racialized peoples.<sup>91</sup> The decision not to engage with racism and colonialism in practice or in scholarship is at least in part an adaptive mechanism. Moreover, given the devaluation of such “non-traditional” scholarship for purposes of tenure and promotion, racialized academics who do engage with racism and colonialism in their work may suffer significant professional consequences.<sup>92</sup>

### *The Consequences of Preserving the Paradigm*

The result of white and racialized women not routinely incorporating anti-racist and anti-colonialist analyses into their work is not only an impoverished body of feminist literature that excludes the experiences of non-dominant women but one also that does little to advance the interests of all women, including white women. While racism and colonialism may feel like volatile territory too dangerous to explore, the risk of not engaging is much greater.<sup>93</sup> As Sherene Razack and Mary Louise Fellows have pointed out, as long as any system of domination remains intact, no woman will be free of oppression.<sup>94</sup> If we take seriously the ways in which oppressions and privileges interlock, then we have no choice but to work for the emancipation of all people, including men, from racism and colonialism as well as other forms of subordination. This approach is the only way that feminism can be successful. As Audre Lorde eloquently explains, “I am not free while any woman is unfree, even when her shackles are very different from my own. And I am not free as long as one person of Colo[u]r remains chained. Nor is any one of you.”<sup>95</sup>

Until feminist scholarship and practice adopts the eradication of racism and colonialism as a core tenet of the feminist project, many racialized women will continue to find feminism alienating. When racialized women expend their energy on convincing white women to engage in the struggle against racism or when they expend their energy managing white women’s hurt, anger, and resentment at the

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91. Peggy C Davis, “Law As Microaggression” (1989) 98 Yale Law Journal 1559 at 1566.

92. See Patricia Monture, “‘Doing Academia Differently’: Confronting ‘Whiteness’ in the University” in Frances Henry and Carol Tator, eds, *Racism in the Canadian University: Demanding Social Justice, Inclusion, and Equity* (Toronto: University of Toronto Press, 2009) 76; Dolores Delgado Bernal and Octavio Villalpando, “An Apartheid of Knowledge in Academia: The Struggle over the ‘Legitimate’ Knowledge of Faculty of Color” (2002) 35 Equity and Excellence in Education 169; Robert A Williams, Jr, “Vampires Anonymous and Critical Race Practice” (1997) 95 Michigan Law Review 741.

93. Rhodes, *supra* note 77 at 36.

94. Fellows and Razack, *supra* note 10 at 336.

95. Audre Lorde, “The Uses of Anger: Women Responding to Racism” in Audre Lorde, *Sister Outsider*, revised edition (Berkeley, CA: Crossing Press, 2007) 124 at 133.

expense of their own emotional well-being, Tracey Lindberg's words describing her relationship as an Indigenous woman to the feminist movement seem especially apt: "[H]ow can I call you sister when you were oppressor first?"<sup>96</sup> Many Aboriginal women have stated that a feminism that does not work towards decolonization and Aboriginal sovereignty—the liberation of *all* Aboriginal peoples—has no meaningful role in their lives.<sup>97</sup> Moreover, some Aboriginal women take issue with what they view as the flawed premise of feminism—seeking equality with men.<sup>98</sup> As Trish explains, "[m]y problem with feminism is quite simple. The reference point for feminism is the power and privilege held by white men of which I aspire to neither."<sup>99</sup> Some Aboriginal women have recognized the potential of feminism but agree that its objectives first must be transformed.<sup>100</sup> This response resembles that of many other racialized women as well. In describing a meeting in the United States on the place of feminism in the lives of racialized women, Patricia Lessane suggests that "while many women of colo[u]r do feminist work, we still find it difficult to identify ourselves as feminists or view feminism as a viable means for liberation."<sup>101</sup> As long as feminism minimizes the relevance of racism and colonialism, many Aboriginal and other racialized women will continue to distance themselves from feminist political agendas.

We need to understand feminist legal scholarship as a political exercise that has impact well beyond what may be perceived as the self-indulgent musings of a privileged few in the academy. In addition to modelling what should happen in feminist practice, scholarship plays critical roles in the shaping of feminist legal

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96. Lindberg, *supra* note 50 at 347. Many racialized women have taken issue with the notion of "sisterhood" that has dominated (white) feminist thinking. Thornhill asserts that, "real Sisterhood should mean a willingness, a political and personal will—collectively and individually—to assume responsibility for the elimination of racism." Thornhill, *supra* note 5 at 157.
97. See Lindberg, *supra* note 66 at 347; Rhonda Johnson, Winona Stevenson, and Donna Greschner, "Peekiskwetan" (1993) 6 *Canadian Journal of Women and the Law* 153 at 171 (as quoted by Stevenson). In addition, Stevenson suggests that some feminists are "missionizing," referring to their efforts to attract Aboriginal women to feminism as "[a]ssimilation by another name" (at 167). See also Lina Sunseri, "Moving beyond the Feminist Versus Nationalism Dichotomy: An Anti-Colonial Feminist Perspective on Aboriginal Liberation Struggles" in Patricia A Monture and Patricia D McGuire, eds, *First Voices: An Aboriginal Women's Reader* (Toronto: Inanna Publications and Education, 2009) 253.
98. For example, as Mary Ellen Turpel notes, "[e]quality is simply not the central organizing political principle in our communities. It is frequently seen by our Elders as a suspiciously selfish notion, as individualistic and alienating from others in the community. It is incongruous to apply this notion to our communities." Turpel, *supra* note 66 at 180.
99. Patricia Monture-Angus, *Journeying Forward: Dreaming First Nations' Independence* (Halifax: Fernwood, 1999) at 156, n 22.
100. See Emma LaRocque, "Métis and Feminist: Ethical Reflections on Feminism, Human Rights and Decolonization" in Joyce Green, ed, *Making Space for Indigenous Feminism* (Winnipeg: Fernwood, 2007) 53 at 67; Isabel Altamirano-Jiménez, "Indigenous Women, Nationalism, and Feminism" in Razack, Smith, and Thobani, *supra* note 2, 111.
101. Patricia Williams Lessane, "Women of Color Facing Feminism—Creating Our Space at Liberation's Table: A Report on the Chicago Foundation for Women's 'F' Series" (2007) 1:7 *Journal of Pan African Studies* 3 at 3 [emphasis in original].

strategy and policy. As Joanne Conaghan remarks, “academic and political feminism are inextricably linked: while the intellectual power of feminist arguments is no guarantee of their political success or cultural acceptability, it does confer a certain weight, an authority which if strategically deployed can contribute to the process of political change.”<sup>102</sup> In the legal context in particular, scholarship influences judicial decision-making and the establishment of case precedents. Feminist scholars can play an important role in assisting courts with the complicated issues they encounter. For example, it is unlikely that judges will be able to decipher how to apply interlocking theory to their particular cases without guidance from topical feminist scholarship. In addition, feminist legal scholarship shapes the education of future generations of lawyers, judges, and activists. Mari Matsuda observes the consequences of tunnel vision in legal scholarship: “When outsiders’ perspectives are ignored in legal scholarship, not only do we lose important ideas and insights, but we also fail in our most traditional role as educators. We fail to prepare future practitioners for effective advocacy and policy formation in a world populated by women and men of differing points of view.”<sup>103</sup> The value and power of crafting feminist legal scholarship that seeks to eradicate all systems of domination cannot be overstated.

### *Moving towards a Shift in Paradigms*

The reality is that it takes very hard work to do feminist legal scholarship properly, one of the reasons that many women, both white and racialized, have not yet “shifted the paradigm.” In contrast, as Angela Harris remarks, “[e]ssentialism is intellectually convenient, and to a certain extent cognitively ingrained.”<sup>104</sup> Doing feminist legal scholarship well requires educating oneself on a number of different critical approaches, including critical race theory, and learning to challenge previously taken-for-granted understandings of feminism. White women must do more than browse the work of critical race feminists for pithy quotations.<sup>105</sup> Rather, they need to engage earnestly with the scholarship of racialized women as well as their advocacy efforts. As Matsuda notes, citations become limited and “self-referential” when scholars do not contend with new ideas but, instead, are “reproducing what they already know,”<sup>106</sup> a pattern that I observed in my review of feminist scholarship in the *CJWL*.

If we wish to move beyond a few token references to racism and colonialism stemming from the “‘political correctness’ of current feminist movement,” as

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102. Conaghan, *supra* note 86 at 355.

103. Matsuda, *supra* note 3 at 4.

104. Harris, *supra* note 5 at 589.

105. Audre Lorde, “An Open Letter to Mary Daly” in Lorde, *Sister Outsider*, *supra* note 95, 66 at 68.

106. Matsuda, *supra* note 3 at 3.

feminists we must begin by pushing the boundaries of knowledge.<sup>107</sup> When we conduct research and select sources to cite in our work, we must be cognizant of the choices we are making. Our selections contribute to whether scholars and scholarship are viewed as legitimate inside and outside of academia, a role for us that is both empowering and sobering. Being mindful of our decisions does not mean that we treat the work of marginalized scholars delicately or assume their work is “critical.”<sup>108</sup> Any such suggestion would be condescending. The point is simply to use research thoughtfully and strategically and with proper attribution, which also guards against the risk of appropriating the work of racialized women. Reflecting critically about what level of generalization is necessary and appropriate in our theorizing—for example, not only using “women” when we mean “white women”<sup>109</sup> but also recognizing that in some limited contexts a restrictive notion of “essentialism” may be helpful<sup>110</sup>—will contribute to responsible scholarship. Moreover, it is vital that we interrogate how we are situated in our own research.<sup>111</sup> Ultimately, both the research process and the final product must be politicized.

Doing feminism and feminist scholarship justice also mandates a complex negotiation of diverse viewpoints and interests, “not an easy task both for theoretical generalizations and for political strategy.”<sup>112</sup> As mentioned earlier, white women may be deterred from incorporating anti-racist and anti-colonialist analyses into their work because they do not feel competent. This concern is understandable

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107. bell hooks, *Feminist Theory: From Margin to Center*, 2nd edition (Cambridge, MA: South End Press, 2000) at 52.

108. For example, scholarship that focuses on racialized peoples is often mistakenly labelled “critical race theory” by non-critical race theorists, which is as problematic as suggesting that all writing on women is feminist.

109. See, for example, Thornhill, *supra* note 5 at 154-5, 160. See also Harris, *supra* note 5 at 589.

110. See, for example, Deckha, *supra* note 19. For a discussion on “contextual” or “strategic essentialism,” see Radha Jhappan, “Post-Modern Race and Gender Essentialism or a Post-Mortem of Scholarship” (1996) 51 *Studies in Political Economy* 15 at 51-4. Gayatri Spivak argues that “it is not possible, within discourse, to escape essentializing somewhere.” She further states: “So then strategically you can look at essentialisms, not as descriptions of the way things are, but as something that one must adopt to produce a critique of anything.” Gayatri Chakravorty Spivak, *The Post-Colonial Critic: Interviews, Strategies, Dialogues*, edited by Sarah Harasym (New York: Routledge, 1990) at 51. Similarly, Patricia Williams states: “The hard task is to untangle the instances where the categoric helps us predict and prepare for the world from those instances where it verges into scapegoating, projection and prejudice.” Williams, *supra* note 40 at 30. But see Rosemary Hunter, “Deconstructing the Subjects of Feminism: The Essentialism Debate in Feminist Theory and Practice” (1996) 6 *Australian Feminist Law Journal* 135 at 156 (arguing that essentialism in any form is “dangerous”).

111. For a helpful example of how two white feminists located themselves in their analysis of racism, see Stubbs and Tolmie, *supra* note 63 at 127: “As two non-Aboriginal women, one of us a New Zealander, we have agonized over how best to approach this subject, recognizing our limited knowledge in this area, our lack of authority to speak on behalf of anyone but ourselves, and our concern not to appropriate the pain or the voices of Aboriginal women . . . We have also come to recognize that we always imply race in what we write, that is our own race. And yet we have come to the view that without the explicit recognition of the intersection of race and gender, an analysis of violence against women is a partial one.”

112. Celina Romany, “Ain’t I a Feminist?” (1991) 4 *Yale Journal of Law and Feminism* 23 at 24.

given the ambiguity of intersectionality as a research method. As Jennifer Nash explains, there is a “tremendous gap between conceptions of intersectional methodology and practices of intersectional investigations,” the latter of which (the “how”) is largely unarticulated and undeveloped.<sup>113</sup> But why should we expect (or accept) that feminists’ intellectual and political capacities stop short of developing knowledge about racism and colonialism as well as interlocking research methods? Clearly, feminist scholars are constantly braving new territory in their work. Theorizing about racism and colonialism in one’s scholarship may feel awkward initially but will grow to be more natural with practice, eventually becoming a reflexive component of feminist analysis. Here, Trish’s writing on these issues will be invaluable in pushing us forward, in particular, her critical work on colonialism and sovereignty.<sup>114</sup> It is in feminists’ self-interest to engage with difference—personal intellectual development translates into scholarship that is enriched. After all, “[a] system of legal education that ignores outsiders’ perspectives artificially restricts and stultifies the scholarly imagination.”<sup>115</sup>

Perhaps more daunting than even the substantive work required is the emotional investment. It requires first of all letting go of a sense of ownership over feminism. Many white feminists feel protective of the movement they worked hard to create both inside and outside the academy. However, this movement has been exclusive, intensely flawed, and oppressive to many women.<sup>116</sup> To effect change, feminists need to be painfully self-reflective, to unlearn biases, and to recognize the various ways in which they participate in the subordination of others. As Fellows and Razack explain, “[a]lthough we *know* we are complicitous in the oppression of other women, we seldom *feel* this to be true.”<sup>117</sup> This work will require white women to examine honestly their emotional responses to racism and colonialism including fear, anger, and resentment, reactions that stubbornly persist in practice despite exhaustive attempts to repudiate them in theory. White feminists have a responsibility to work out their racial and colonial baggage on their own. As Lorde cautions, “[n]o woman is responsible for altering the psyche of her oppressor, even when that psyche is embodied in another woman.”<sup>118</sup>

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113. Nash, *supra* note 65 at 6.

114. Trish grappled with the complexity of Aboriginal sovereignty in much of her scholarship. See, for example, Monture-Angus, *supra* note 99. Legal feminists must incorporate this type of theorizing into their scholarship as part of the decolonizing obligation of the feminist project.

115. Matsuda, *supra* note 3 at 3.

116. As Mariana Valverde points out, “[t]he racism of white feminism is neither externally caused nor accidental: it is integral to what the mainstream Anglo-Saxon tradition has called ‘feminism.’” Mariana Valverde, “Racism and Anti-Racism in Feminist Teaching and Research” in Constance Backhouse and David H Flaherty, eds, *Challenging Times: The Women’s Movement in Canada and the United States* (Montreal and Kingston: McGill-Queen’s University Press, 1992) 160 at 162.

117. Fellows and Razack, *supra* note 10 at 337 [emphasis in the original].

118. Audre Lorde, “The Uses of Anger: Women Responding to Racism” in Lorde, *Sister Outsider*, *supra* note 95, 124 at 133. Similarly, Trish describes the obligation of white women succinctly

In the context of scholarship, this will require white women to challenge their responses to research that centres racism and colonialism, work that is sometimes criticized for neglecting other sites of oppression (“but what about disability or sexual orientation”). To some extent, intersectional analysis is inherently vulnerable to this critique. After all, how many intersections must be examined before an analysis is complete?<sup>119</sup> However, as George Dei and Agnes Calliste observe, “[i]n conventional discourses articulating a multiplex of oppressions, race is the category that often gets lost.”<sup>120</sup> According to Trina Grillo and Stephanie Wildman, racial oppression is often analogized to sexism and other experiences of subordination experienced by white women, thus shifting attention away from race and racism.<sup>121</sup> Do criticisms of race-focused analyses arise because other oppressions are more comfortable to discuss, as Dei and Calliste suggest?<sup>122</sup> White women need to examine whether their intellectual critiques of feminist scholarship that grapples with race and colonization are theoretical or whether they derive from an emotional urge to avoid, deny, or minimize the relevance of racism, colonialism, and white supremacy.

### *Creating Space for Racialized Women*

Even though I was the one who had reason to feel aggrieved at the meeting I described at the beginning of this article, I had to make space for the emotional (even violent) outbursts of white women who did not want to deal with racism. However, racialized women have few opportunities to express their own frustration at the persistence of racism and the additional injury of being silenced about it. White feminists who truly are committed to eradicating racism and colonialism must create space—physical and metaphorical—for racialized women to theorize and strategize (and agonize) about racism, even (and especially) when these spaces threaten white women’s sense of security. Moreover, white women need to learn to respect the space that racialized women attempt to create for themselves. I have been stunned by the efforts of some white women to infiltrate these spaces, even at critical race conferences.<sup>123</sup> It is difficult for some white women to envision a

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when she states: “Your pain is unfortunate. But do not look to me to soften it. Look to yourself.” Patricia A Monture, “Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Ya-Gah” (1986) 2 *Canadian Journal of Women and the Law* 159 at 168.

119. Chang and McCristal Culp, Jr, *supra* note 65 at 485.

120. Dei and Calliste, *supra* note 15 at 15.

121. Trina Grillo and Stephanie M Wildman, “Obscuring the Importance of Race: The Implications of Making Comparisons between Racism and Sexism (Or Other -isms)” (1991) *Duke Law Journal* 397.

122. Dei and Calliste, *supra* note 15 at 15.

123. For example, white people often attempt to occupy racialized only spaces at critical race theory conferences (rather than attend parallel meetings for white allies). At one meeting, a white woman explained her presence in the space reserved for racialized participants by stating she was “curious” about what happened at these meetings.

feminist sphere that does not include them. Such a space is necessary not only for the psychological well-being of racialized women but also for the greater feminist project. While I am loath to make clumsy analogies to sexism, it does seem easier for many white women to appreciate the value of women-only spaces.

Spaces exclusively for racialized women and their work will be necessary as long as racism and colonialism are alive and well. Our aspiration should be to make such spaces redundant; however, realistically we will have to make ongoing concerted efforts to ensure that racialized women are heard.<sup>124</sup> That is why we will continue to need special issues such as this one where the work of Aboriginal and other racialized women is showcased. Otherwise, scholarship by racialized women tends to diminish, as does scholarship on racism and colonialism.

When the *CJWL* published the special issue on racism in 1993, the guest editors expressed concern that white women would consider the issue irrelevant to them, that they would view racism as something that concerned only racialized women.<sup>125</sup> Trish noted that once racialized women on the board were put in charge of the issue, their non-racialized counterparts basically checked out, leaving the impression that “racism work” was the responsibility of racialized women.<sup>126</sup> As I noted earlier in my review of *CJWL* scholarship, “racism work” is still perceived to be the obligation of racialized women given that they are far more likely to write about racism and colonialism than white women. For the special issue in 1993, the guest editors also worried that the collection would be crafted for a white audience.<sup>127</sup> In other words, the special issue would become an effort to educate white women rather than an opportunity for racialized women to move scholarship and strategy on racism forward.

This concern has merit. Like most feminists, I have encountered feminist spaces in which white women and racialized women have come together to strategize around racism, often in an attempt to increase the participation of racialized women in particular contexts. These meetings more often than not turn into racialized women sharing their expertise with white women who have not yet done the work. bell hooks observes:

After constructing feminist theory and praxis in such a way as to omit focus on racism, white women shifted the responsibility for calling attention to race onto others. They did not have to take the initiative in discussions of racism or race privilege but could listen and respond to non-white

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124. Derrick Bell has argued persuasively on the permanence of racism. See Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992).

125. Monture, Thornhill, and Williams, *supra* note 4 at 225.

126. Patricia A. Monture-OKanee, “Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Ya-Gah” (1993) 6 *Canadian Journal of Women and the Law* 119 at 119-20, n 2. This version of the article was a French translation of the 1986 piece in the *CJWL*.

127. Monture, Thornhill, and Williams, *supra* note 4 at 225-7.

women discussing racism without changing in any way the structure of feminist movement, without losing their hegemonic hold.<sup>128</sup>

Paradoxically, such gatherings have the potential to be harmful. White participants often feel as though they have done their part simply by attending and indicating an openness to listen to racialized women; white women can feel good about themselves while remaining blissfully ignorant about how racialized women experience the same space. Racialized people, Trish asserts, “always end up at a conference on racism explaining what racism is and teaching. We do not get a chance to be with each other and we do not get a chance to hear each other.”<sup>129</sup>

Racialized women need to organize on their own before collaborations are likely to be fruitful. Alliances across racialized groups first need to be developed and strengthened, including between Aboriginal and non-Aboriginal racialized women. Unfortunately, many racialized women are reluctant to initiate racialized-only spaces for fear of alienating or angering white women they view as potentially important allies (or powerful adversaries). As previously discussed, racialized women also may be reluctant to produce scholarship that deals explicitly with racism and colonialism for the same reasons. As Esmeralda Thornhill observes in the *CJWL* special issue on racism, “this kind of academic writing is not really a safe place for us,” a comment that sadly remains true twenty years later.<sup>130</sup> White women need to recognize their role in creating and perpetuating this fear, and they need to use their privilege to facilitate rather than hinder spaces that racialized women view as beneficial. They also have a responsibility to change the spaces and discourses that traditionally have been hostile to racialized women and to relinquish their power to define feminist spaces.<sup>131</sup> In the process, they will have to learn “how to stand alone, unpopular and sometimes reviled”<sup>132</sup> when raising issues of racism and to absorb some of the backlash that is usually directed at racialized women.

Being an ally also entails supporting conditions that will permit racialized women to flourish as scholars, ones in which they can begin to develop a Canadian canon of critical race feminism that becomes familiar to, and used by, all feminists in their scholarship. As the editorial board of the special issue on racism in 1993 noted, “[e]mpowering this group to speak out on issues of race and racism is a precondition to any serious effort to foster race-conscious feminist analyses of law.”<sup>133</sup> The envisioned canon of critical race feminism must pay particular attention to the

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128. hooks, *supra* note 107 at 52.

129. Monture, *supra* note 118 at 169.

130. Monture, Thornhill, and Williams, *supra* note 4 at 229.

131. Trish also discussed the need to provide Aboriginal and other racialized women the “room to speak and the power to define.” Patricia A Monture-OKanee, “The Violence We Women Do: A First Nations View” in Backhouse and Flaherty, *supra* note 116, 193 at 199.

132. Audre Lorde, “The Master’s Tools Will Never Dismantle The Master’s House” in Moraga and Anzaldúa, *supra* note 1, 98 at 99.

133. “Editorial” (2005) 7 *Canadian Journal of Women and the Law* i at v.

historic and continuing colonization of Aboriginal peoples in its theorizing. As discussed earlier, feminist scholarship published in the *CJWL* rarely considers colonialism. Even work that focuses on racism tends to neglect the impact of colonization in the Canadian context, thus reinforcing and contributing to the oppression of Aboriginal women.<sup>134</sup> The responsibility to transform feminist legal scholarship lies with all of us.

### Conclusion

In the presentation I described at the beginning of this article, I argued that women should not call themselves feminist if they are unwilling to grapple with racism and colonialism. Similarly, I question whether scholarship should be considered feminist if it does not undertake such analyses. As Martha Minow explains, translating dominant women's interests into a universal feminist perspective is the "risk of departing from stringent demands of feminism, rather than a risk inherent in it."<sup>135</sup> Indeed, Wiegman cites "academic feminism's encounter with race, ethnicity, class, sexuality, and nationality as a critical reason it continues to exist."<sup>136</sup> Feminism requires us "to take all women seriously by challenging the patterns of hierarchical power that have at times excluded or degraded all, or some, women."<sup>137</sup> In both theory and practice, feminism requires more than simple self-identification as a feminist. Rather, it demands a commitment to practising feminist ideals that include anti-racism, anti-colonialism, and challenges to other systems of domination. "Feminist" must be more than a label; it should be a way of living and interacting with the world. In my view, one must earn the claim that one's scholarship is feminist. "Feminist" scholarship that is silent on racism and colonialism ultimately denies the existence and omnipresence of these structures of domination in the lives of both racialized and white women, a consequence that is decidedly unfeminist.

I am not suggesting that we articulate a comprehensive checklist of who qualifies to be a feminist or which scholarship deserves the same recognition. I acknowledge the dangers of setting rigid parameters around which women may call themselves feminist, and I certainly do not wish to replicate the systems of domination and exclusion that historically alienated racialized women from the feminist movement. However, self-identifying as a feminist is insufficient in the same way that proclaiming oneself anti-racist means little if actions do not corroborate the claim. Empty declarations have the potential to do serious harm to the interests

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134. For a discussion of how Canadian anti-racism theory and practice perpetuate colonial agendas, see Bonita Lawrence and Enakshi Dua, "Decolonizing Antiracism" (2005) 32:4 *Social Justice* 120.

135. Martha Minow, "Beyond Universality" (1989) *University of Chicago Legal Forum* 115 at 130.

136. Wiegman, *supra* note 42 at 370.

137. Minow, *supra* note 135 at 116.

of marginalized communities as well as the larger feminist and anti-racist movements. Feminism does and should embody a set of principles that includes actively challenging racism and colonialism in all of its forms. In other words, my vision of feminism rejects complicity with racist structures and exploitation of white privilege as much as it rebukes overt manifestations of racism and colonialism. In this way, I suggest that we should be more exacting about who and what is considered feminist, which may at first seem counterintuitive to the commitment to make feminism more inclusive. If we accept that self-identification is adequate, however, I have grave doubts about the transformative potential of feminism and feminist scholarship more specifically.

It is disappointing that twenty years after the special issue on racism was published, the impact of racism and colonialism still have not become ingrained into feminist analyses. However, I am cautiously optimistic that the next twenty years will be more inspired. We have access to more resources than we ever had before. As the only feminist legal journal in Canada, the *CJWL* is uniquely situated to realize the paradigm shift in feminist legal scholarship that was envisioned in 1993. In addition to facilitating the participation of Aboriginal and other racialized women as authors and members of the editorial board, the *CJWL* also must articulate editorial standards that demand a more complete feminist analysis. "Inclusiveness" is not a sufficient criterion for assessing the quality of scholarship that is submitted for publication.<sup>138</sup> Rather, authors must be asked to consider the "race question" in every feminist analysis, not only when the issue concerns racialized women specifically.<sup>139</sup>

The fact that racialized women still are under-represented in the *CJWL* reflects systemic problems concerning access to law schools, legal organizations, and academia. Our institutions, feminist and non-feminist alike, may seem more representative on their face than they did twenty years ago, but real change will not happen until we invite and nurture the participation of a critical mass of women who have been marginalized.<sup>140</sup> We must take this obligation seriously if we wish to advance scholarship.

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138. "Information for Contributors" (2012) 24 *Canadian Journal of Women and the Law* 266.

139. Of course, this request is no guarantee that authors will comply willingly. For example, a conference on sexual violence held at the University of Ottawa to commemorate the tenth anniversary of the *Jane Doe* decision attracted a large number of submissions. Although the call for papers specifically asked participants to address racism, very few proposals included any reference to it. Many of the presenters required extensive coaxing before they incorporated an anti-racist analysis.

140. The recruitment of racialized professors to law schools is not enough. If racialized faculty members are not valued and supported after they are hired, they may choose to flee an environment that many experience as oppressive, to the great detriment of legal education and scholarship. Many racialized faculty members describe the academy as isolating, alienating, hostile, and demoralizing. Furthermore, the workload for many racialized professors is overwhelming, given the additional (unacknowledged) responsibilities to mentor racialized students and participate in equity-related initiatives. At the same time, these professors have to navigate the racism,

Feminist scholarship went through a rousing period in which challenges to gender essentialism and white privilege were blunt, unapologetic, and at times even furious. We need to recapture that spirit in a scholarship that has become sterile in relation to racism and colonialism and reignite a conversation that we have permitted to become stilted. As Lorde recognizes, “it is not difference which immobilizes us, but silence.”<sup>141</sup> In other words, we need to tap into the “thunder in our souls” with the bravery, audacity, and integrity that Trish demonstrated in all of her personal and scholarly pursuits. Honouring Trish properly demands no less. I wish us courage.

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colonialism, and sexism of students, colleagues, administrators, and institutional norms and policies. The capacity of racialized women to advance a scholarly agenda in this environment is significantly compromised. On the challenges faced by racialized faculty in the academy, see generally Caroline Sotello Viernes Turner, Juan Carlos González, and J Luke Wood, “Faculty of Color in Academe: What Twenty Years of Literature Tells Us” (2008) 1 *Journal of Diversity in Higher Education* 139; Gloria D Thomas and Carol Hollenshead, “Resisting from the Margins: The Coping Strategies of Black Women and Other Women of Color Faculty Members at a Research University” (2001) 70 *Journal of Negro Education* 166; Pamela J Smith, “The Tyrannies of Silence of the Untenured Professors of Color” (2000) 33 *University of California Davis Law Review* 1105; Monture, *supra* note 92.

141. Audre Lorde, “The Transformation of Silence into Language and Action” in Lorde, *Sister Outsider*, *supra* note 95, 40 at 44.

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