
“Color Blindness, History, and the Law”

from *The House That Race Built* (1997)

Kimberlé Crenshaw

Kimberlé Crenshaw is a legal scholar and cultural critic known for coining the term “intersectionality” and being an early exponent of critical race theory. Her contributions to the field of law have been astonishingly broad and consequential. In the excerpt below from her article “Color Blindness, History, and the Law,” Crenshaw argues that the law is a reflection of how the state chooses to exert its power over people through legal and ideological constructions of race.

It is fairly obvious that treating different things the same can generate as much an inequality as treating the same things differently. Anatole France captured that inequality when he noted that the law in its majestic equality prevents the rich and the poor from sleeping under bridges. Clearly, the law works in inequality when the rich will never seek that worldly pleasure, and the poor have no other choice. A similar denial of social power differentials between racial groups reproduces and insulates that very power disparity. Formal equality in conditions of social inequality becomes a tool of domination, reinforcing that system and insulating it from attack. . . .

Just as the realists showed that there was in fact no free market, much of critical race theory is attempting to show that there is no free market of race that determines relationships between blacks and whites. There is no free competition between blacks and whites in part because the law actually structures

those relationships across a wide range of societal competitions over certain social resources.

To conclude, the doctrine of color blindness, along with the nineteenth-century market vision it endorses, uses and redeploys in the context of equal opportunity very narrow visions of equality and a specific contested vision of the notion of the private sphere. It not only works to legitimize material deprivations, but it also produces a particular ideological regime. That regime forces African Americans into articulating legitimate demands within the discourse of victimhood. Doing so is the only way that blacks can achieve political power: to show that there is a defect in the market and that the defect is constituted by an intentional, particular, state actor articulating its decision to discriminate solely on the basis of skin color—that is, essentially forcing black people to articulate themselves as perfect victims as against a perfect discriminator. Consequentially, when blacks are told that they should not be deploying the use of victimology as a way of articulating demands, they are essentially being forced into a catch-22. The only way one can achieve political power through this structure is to articulate ourselves as victims, yet the very articulation of ourselves as victims is a justification for rejecting our claim. In the law, it is clear that the end of interpretation is usually the exercise of state power. Such interpretation is produced by the ways state power, in fact, will be deployed in a particular context.

I think we need to be prepared to understand the distributive consequences of legal ideology, particularly legal ideology that produces social discourses of victimhood, and to reject the invisibility of law in structuring those discourses. In race matters, I think we need to be prepared relentlessly to show how, in fact, law matters.