

## LAURA FLANDERS & FRIENDS

### KIMBERLÉ CRENSHAW ON THE LEGAL SYSTEM CRACKING UP: CRITICAL RACE THEORY & THE ROLLBACK OF CIVIL RIGHTS

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LAURA FLANDERS: Calling all white people. How many times in the last eight months have you heard the phrase, isn't that illegal? Many it seems are just now waking up to the reality that our legal system is not what it's cracked up to be. Our guest, Kimberlé Crenshaw, has been sounding the alarm about this for years. The school of thought with which she is most often associated, [Critical Race Theory](#), is all about thinking critically about our laws and naming the ways that they protect power and the racial status quo. The progress of the 20th century came about largely through establishing new precedents, asserting the collective rights of women and people of color and others as a group or a class. Project 2025 set out explicitly to reverse all of this. And that is what is happening as we speak. How does this administration think and want Americans to think about race and gender and history, and why are the president's executive orders targeting improper ideology, so-called, at the Smithsonian so important to pay attention to? Kimberlé Crenshaw recently [co-authored an article with Jason Stanley](#) on exactly that topic. Crenshaw is a professor of law at Columbia and UCLA law schools, and Executive Director of the [African American Policy Forum](#). She hosts the podcast [Intersectionality Matters!](#), which is currently releasing a new episode of their series, United States of Amnesia: The Real Histories of Critical Race Theory. And the new episode is all about the weaponization of parents' rights as a strategy going all the way back to the United Daughters of the Confederacy. You can find it on all the podcast platforms and I can find my friend Kimberlé Crenshaw right here. Kim, welcome back to the program. So good as always to have you. Last time we were together it was in [Selma](#).

KIMBERLÉ CRENSHAW: It was in Selma, yeah.

LAURA FLANDERS: So much seems to have happened since just this spring.

KIMBERLÉ CRENSHAW: Yes.

LAURA FLANDERS: Are you excited about the new podcast? I know I am. I haven't had a chance to hear it yet. But it sounds again another kind of rallying cry.

KIMBERLÉ CRENSHAW: I am so excited about it, Laura, because as you know, for the last four years we've been sitting here resisting the disinformation about critical thinking, resisting the disinformation about Critical Race Theory, and now we get to actually tell the story and we're

telling a story at a time when people realize that the disinformation has been damaging. So now we are providing what the reality is that people need to know.

LAURA FLANDERS: Next year, if I have my maths correct, is the 30th anniversary of the African American Policy Forum.

KIMBERLÉ CRENSHAW: That's right.

LAURA FLANDERS: Why did you start it, you and your colleague, Luke Harris and the others, why did you think it was important then and what were you hoping to achieve?

KIMBERLÉ CRENSHAW: Oh, Laura, it came out of a similar time, a similar crisis to the one we're facing now. I met Luke Harris, who is the co-founder of the African American Policy Forum during the Anita Hill, Clarence Thomas hearings. Those who are old enough may remember that during the first moment of the hearing, when we heard from Clarence Thomas, he denounced the hearings designed to explore whether he had sexually harassed Anita Hill as a high tech lynching. So we immediately got on the phone and called as many Black men as we could and said, please come down to Washington DC and speak out against this effort to weaponize the tragedy of lynching because this has nothing to do with that history. This has to do with whether this person who is going to be sworn in to be a Supreme Court justice actually is fit for the job. About two o'clock in the morning, I heard a knock on my door and it was Luke and a colleague Carlton Long saying, "We are here to join the men's brigade." We said, "You are the men's brigade."

LAURA FLANDERS: And they were.

KIMBERLÉ CRENSHAW: And they became the two African American men, who went all over the media denouncing this effort to weaponize our history. So as we were sitting on the stairs of the Supreme Court when he was being sworn in, we said two things. Number one, we knew that this was going to change the future, it was going to change our lives in every way we could think of, and that turns out to be true. We also knew that we needed to have an organization that would stand in the breach between anti-racism and feminism, that would make sure that feminism had an anti-racist frame and that anti-racism had a gender sensitive frame. And so the African American Policy Forum has been that organization for the last 30 years that's tried to do that work. So here we are, 30 years later, A, we still exist, but B, everything that we were worried about has come to pass.

LAURA FLANDERS: Well, we have known each other more or less for as long as the African American Policy Forum has been around. And it is extraordinary to think of all the struggles that the organization's been involved in and been a leader in. Looking back, what stands out and what

do you think has changed most significantly since those early days when the issues, as you've mentioned, you know, also included affirmative action and so much more?

KIMBERLÉ CRENSHAW: Yeah, so that's the work that we've been doing. We've been doing affirmative action work. We've been doing work around Black women, who've been killed by the police. We do work to ensure that anti-racist agendas, particularly those that focus on some of the consequences of racism, are inclusive of the ways that women of color, Black women in particular, have experienced racism. One of the things that we probably are notorious for is having encouraged President Obama when he created My Brother's Keeper, to address some of the crisis facing African-American men and boys to include the crisis facing African-American women and girls. Our point is that we all have to deal with some of the consequences of racism. Sometimes those consequences are gendered in different ways, but the reality is African American girls, African American women, face some of the same obstacles and consequences of racism as men do, and some of them are different. And that's what we're seeing right now when we see, you know, 300,000 African American women having lost their jobs since President Trump took over. When we see some of the consequences of the rollback of reproductive rights, and we see how Black women are disproportionately impacted by that, that is the reality of intersectionality. That is the material consequences of being subject to racism and sexism.

LAURA FLANDERS: This is about making policy better and smarter. It's not just about sort of bean counting.

KIMBERLÉ CRENSHAW: Absolutely. The issue is that we're not just trying to say "Me too," for the heck of saying we don't see our names. We're not being called out. We are actually saying, look, for the interventions to be effective, they have to be intersectional. And it's not just with respect to racial justice. We did a lot of work on domestic violence, interpersonal violence, and the reality is a lot of the shelters, a lot of the rape crisis centers don't take into account what the consequences are for women of color. So you have shelters that might not anticipate that all of the people coming there might not speak English. So what happens when they have to deal with a woman of color who's fleeing domestic violence and they don't have language appropriate services, that woman is not being well served. So it is not so much a, you don't, you're not calling out Brown women. It's a matter of the policy that you are following to actually address the problem is not inclusive. And we want the solutions to be inclusive.

LAURA FLANDERS: Alright, so you just mentioned domestic violence and we are speaking in a week in which the president has [dismissed domestic violence](#) as just a fight between a man and his wife at home and sought to remove those statistics from any statistics having to do with violent crime in DC so that he can claim that the deployment of the federalized troops there, the federalized National Guard, has brought down violent crime in that city. That's just one example of a kind of baseline backlash that is characteristic of this moment on just about all the issues that

you've worked with, worked on for 30 years, where perhaps we were at the level of sophisticated, subtle change. We are now, it seems, way back in the basics and nothing's more basic than the president's attacks on the Smithsonian and so-called improper ideology that you wrote about recently with Jason Stanley in *The Guardian*. With so much going on, including armed mobs in the streets, why is it important to pay attention to the president's message to the Smithsonian institution?

KIMBERLÉ CRENSHAW: Well, I think you put your finger on it. When you talk about improper ideology, as Jason Stanley and I wrote, one of the key dimensions of a turn to fascism is the creation of a mythic past is the celebration of this moment that never actually existed, which is better than the moment that we are in now. That's what MAGA is all about. To really stand behind this idea of making America great again, you've got to erase the memory of what America was. You've got to deal away with all the receipts that help us understand the historical roots of what our country looks like right now. And importantly, the struggles that people of color, that women, that queer folk have all done in order to build a different future. So when he says he's going after improper ideology, he's going after that memory, he's going after the history of enslavement. He's going after the history of genocide. He's saying that this kind of history is no longer appropriate for the federal government to officially recognize and historicize and if we have any doubt about what the proper ideology is, what he's trying to elevate, let's just look at what happened at the Naval Academy when they purged the library. What did they take out of the library? They took out Maya Angelou, "I Know Why the Caged Bird Sings." They took out George Lipsitz, "How Racism Takes Place." What did they leave? They left Hitler's "Mein Kampf" on the shelves. They left "The Bell Curve," which was a modern effort to restore scientific racism. To say that there are inherent differences between Black people and white people that explain inequality.

LAURA FLANDERS: One of the stumbling blocks, it seems to me, in pulling together the kind of response, the kind of united response that is needed at this moment is the following sort of discourse. And you tell me if you've heard this, I know I've heard it a lot. White people often are heard to say and organize in organizing meetings as they're rallying the troops or rallying their forces. the authoritarian moves by this administration are unprecedented or un-American. And to that, many African Americans say, "Well, not to us. You just haven't been paying attention."

KIMBERLÉ CRENSHAW: Yeah.

LAURA FLANDERS: So help us. So that often then puts the white people on the back foot and they say, "Oh, well then do we just shrug off this moment? I was trying to get active." So how do you pull these two together where we can prioritize and understand, we see the importance of understanding history and structural violence while not shrugging off the newness of this particular time.

KIMBERLÉ CRENSHAW: Yeah, that is such an excellent question because the reality is that we are never outside of history. We're never apart from the past. I mean, it's famously said that the past isn't even the past. So the reality that we're facing right now is one that is resonant with the past. It's resonant with the moment in history when the forces of the Right, those who'd rather break this country than share this country, those who wanted an exclusive white only democracy as opposed to a multiracial one, took up arms against this country. It was called the Civil War. We were able to fight back from that and we were able to create a democracy based on some fundamental principles that everyone born here is a citizen, that citizens have rights against discrimination. That democracy is the way that we go about making decisions. That was what Reconstruction was all about. Reconstruction was overthrown, it was overthrown violently. It was overthrown in the law. It was overthrown with the participation of the Supreme Court leading to what Langston Hughes says, "Look, you don't have to tell the Negro what fascism is. That is what we have lived." White supremacy is a fascist regime, particularly with respect to those who have been framed as the pariah class who no one has to listen to and we can use as a permanent other to hold everybody else in place. So this is a familiar history. When they try to take that away from us, it's telling us that that history is fundamentally important for our ability to understand the situation in order to respond to it. So we've got to fight even harder when they're trying to erase certain ideas, erase certain moments in history, erase certain people, that is the wake up call, that that's where we have to pitch our buckets and fight with everything we've got because that is the secret to our ability to build on the past in order to create now a future that recovers the democracy that is our birthright.

LAURA FLANDERS: The two sides of that history is not just, it has happened here, it has happened here, it has happened here. It can happen here. But also we have had movements that moved us out of that chapter. We have had movements that we can also look to and learn about, which I think is a very key part of what is trying to be erased right now. The power that could come from telling those stories too. I've got to bring you into the international context for just a minute. The United Nations General Assembly is gathering. We have ongoing, you know, efforts to bring human rights abusers and committers of genocide to any kind of court of international justice. One of the things that I know that you've followed over the years is not just the development of new legal precedent and innovative legal theory in the US, but also internationally with the creation of things like international conventions against the, you know, the violation of the rights of women, of people of color, and of course the convention on the prevention of genocide. What can you tell us about how those two things relate, those two schools of law relate and where do you think that effort stands right now?

KIMBERLÉ CRENSHAW: Well one of the ironies of the United States making the claim that we are the leader of the free world is that the United States has been derelict with respect to some of these most important conventions. The United States was slow and dubious in its embrace of the

World Conference on Racism and ended up repudiating significant dimensions of the World Conference on Racism, slow to adopt CEDAW. That is the convention on the protection of women.

LAURA FLANDERS:: Elimination of Discrimination Against Women.

KIMBERLÉ CRENSHAW: Against Women. Exactly. And of course with respect to genocide and other conventions, the United States has always looked at the implications of these conventions for its own accountability and has frequently been a drag on the international commitment to address these issues.

LAURA FLANDERS: And it does seem to me that if we are ever, for example, going to be successful in bringing claims around environmental protection against abusers of our environment, that notion that groups have rights is going to be critical.

KIMBERLÉ CRENSHAW: Oddly enough, this is actually a debate between liberals, progressives, and critical thinkers about how to conceptualize illegitimate power. The narrowest view is the discrimination happens when an individual is treated badly because of prejudice, because that person is seen as having certain inherent characteristics that justify giving them bad treatment, ill treatment. But the larger part of discrimination is how inequality is structured into our society in a way that visits disadvantages to people based on their membership in certain groups based on where they live, based on what their grandparents or parents had access to or not, based on ideas about this entire group. So civil rights law, when it was most expansive, acknowledged the fact that we lived in a society that had been structured based on some groups having privilege and access and other groups being set aside. In the moments where the civil rights laws did the most is when the court said, our objective now is to dismantle these inequalities, root and branch. So we're not talking about taking one person here and putting them there. We're talking about dismantling the entire system that was built on the idea that some people deserve more than others. That has since disintegrated largely based on some of the conservative viewpoints that number one said, we have to limit our expansive view of equality to what the framers thought right? And the second most important aspect for people to know is that when we build our understanding of equality based on the shared inequalities that people in groups face, it helps everybody because we're able to see what kind of employment practices are unfair, what kind of barriers to being a police officer or a fireman or even a lawyer actually impact the aspirations of everybody. We need to pay attention to how groups are situated with respect to all sorts of institutions. That loss that has been experienced by women, by queer people, by people of color is a loss that everyone at the end of the day, with the exception of the billionaires, stand to have some interest in clawing back into our understanding of equality.

LAURA FLANDERS: And this is why you say the Critical Race Theory, in fact critical thinking is kryptonite to fascism. We've got to address what has been happening in the last few days and one of the most standout things having to do with race is the Supreme Court decision basically okaying racial profiling for the purpose of immigration detentions in that case coming out of California. What do you make of that? At the very same time, we're of course not allowed to take race into account when it comes to college admissions, affirmative action and so on. What's going on?

KIMBERLÉ CRENSHAW: Yeah, well this is the moment where the quiet part is being said out loud. Up until this moment, you know, one could have had a fight with conservatives around whether they really do embrace colorblindness. Now, I've always been of the belief that the conservative assault on affirmative action, on expansive civil rights was never really about colorblindness. It was about defending the status quo against any effort to effectively say the status quo is discriminatory and we do not have to continue to recreate it. But in this moment, it's a hundred percent clear. Their objection to affirmative action to expansive civil rights is not a repudiation of the idea that race should ever play a role in decision making. They don't, that's not what they believe. They believe race should not play a role in creating greater access to equality and inclusion. They do believe race should play a role in deciding who should be surveilled. They do believe in race when it comes to who should be collected up and potentially put on buses and planes and sent out of this country. They're telling us that race can be a factor when it comes to the worst burdens that our society is willing to place on people who live here and race cannot be a factor in actually addressing some of the ongoing consequences of being part of a group that is seen as a pariah or they don't really have a right to be here or they don't have a right to the best things in life.

LAURA FLANDERS: What are your thoughts on the assassination of conservative activist Charlie Kirk, one of those who led the campaign against Critical Race Theory?

KIMBERLÉ CRENSHAW: I know I speak for millions of people in denouncing this kind of violence. I think it's also abundantly clear that this kind of violence in this tinderbox is all the more reason why we need to be vigilant against increasing the temperature. And so we have to be very, very careful, hope the media will play its role in suppressing the tendency in this moment to ratchet up the discourse, making it clear that this is not something that we can afford. And hoping that whatever that thing is that makes people believe that we are exceptional, that there's some evidence that we've come to the brink and are willing to step back from it.

LAURA FLANDERS: Kimberlé Crenshaw, thank you so much for being with us.

KIMBERLÉ CRENSHAW: Thank you Laura. Always a pleasure to be with you.

LAURA FLANDERS: The African American Policy Forum convened a knock your socks off [panel of Black Attorneys General](#) this summer. They spoke at the Seaside Resort of Oak Bluffs in Martha's Vineyard. At that event, Tish James, Attorney General of New York talked about how she refuses to let fear live side by side with faith in her head. She says she is utterly focused on the job at hand, which is bringing this country not just together but forward. How does intersectionality work? Well, as she pointed out, when you lay off 300,000 Black women government workers, you are laying off exactly the population that represents 60% of Black households and the leading acquirers of Black housing wealth in this country at this moment. So you can focus on the people, but far better, you focus on the phenomenon of rising foreclosure rates, housing instability, and general disruption in the housing market in key urban areas around DC in a way that is inevitably transferring housing, wealth and assets to speculators. Who's that good for? No one. And that is exactly the point. You can find more of our coverage on this critical issue and some exclusive reporting coming up through subscribing to our free podcast. All the information's at our website. In the meantime, stay kind, stay curious. For Laura Flanders and Friends, I'm Laura.

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