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Intersectionality as Method: A Note

"People are willing to think about many things. What people refuse to do, or are not permitted to do, or resist doing, is to change the way they think," Andrea Dworkin wrote in *Woman Hating* in 1974 (1974, 202). Method concerns the way one thinks, not what one thinks about, although they can be related.[1] Talking about thinking about the way one thinks is complicated, in that one is doing what one is talking about doing at the same time one is talking about doing it. But as, for example, Marxist theory has class as its subject and employs dialectical materialism as its method, intersectionality both notices and contends with the realities of multiple inequalities as it thinks about "the interaction of" those inequalities in a way that captures the distinctive dynamics at their multidimensional interface (Crenshaw 1989, 140; see also Smith 1991).[2] Resisting

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[1] With apologies to readers who do not need this footnote, "method" in philosophy refers to means of producing valid knowing. *Blackwell*'s describes it as "a combination of rules, assumptions, procedures, and examples determining the scope and limits of a subject and establishing acceptable ways of working within those limits to achieve truth. The question of philosophical method is itself a matter for philosophy and constitutes a major example of the reflective nature of the subject. Philosophers disagree about the appropriate philosophical method" (Bunnin and Yu 2004, 430). My own disagreement extends to the use of the term "truth" in this description, although I do not mean to imply that there is no such thing as reality and, hence, no more and less accurate reflections of it. Examples of various methods, roughly speaking, include those of René Descartes (doubt), John Stuart Mill (induction), analytical philosophy (language), phenomenology, and science. See also Angeles (1981, 170–72), and Blackburn (1994, 241–42). The parts on method in *Toward a Feminist Theory of the State* (MacKinnon 1989) were framed and written in 1972–73. The manuscript was widely circulated, including in academic circles, and first published a decade later in MacKinnon (1982). This was the original discussion of feminist method, written when nothing on the subject existed, on the view that this new philosophy deserved, even as it already embodied, its own method.

[2] Obviously, this sentence, and intersectionality itself, are not limited to race and sex. Any assumption that any specific inequality not mentioned is thereby overlooked, denied, excluded, or minimized is mistaken. At the same time, the grandiose claim that the discussion here automatically applies in the same form to every existing inequality in interaction with all others, without attention to their concrete particulars, violates intersectional method. To be pinned between purportedly denying the crucial relevance of everything not expressly claimed, on the one hand, and pilloried as totalizing for the extent to which an analysis is claimed as more widely applicable, on the other, is to be silenced.

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dissociation—the trance state of much academic theorizing—intersectionality begins in the concrete experience of race and sex together in the lives of real people, "with Black women as the starting point" (Crenshaw 1989, 140).

Intersectionality as method in the sense focused here does not simply add variables. It adopts a distinctive stance, emanates from a specific angle of vision, and, most crucially, embodies a particular dynamic approach to the underlying laws of motion of the reality it traces and traps while remaining grounded in the experiences of classes of people within hierarchical relations "where systems of race, gender, and class domination converge," criticizing a rigidly top-down social and political order from the perspective of the bottom up (Crenshaw 1991b, 1246).[3] Imbued with consistent and potent observations of reality, contending in all its complexity with social realities that are understood to be definitively there as well as in constant flux—without falling prey to the illusion that these realities can be presumed to be fluidly reversible or reinterpreted out of existence—intersectionality as theory, on my reading, has no true postmodern practitioners.[4]

On the simpler level of what it thinks about, intersectionality focuses awareness on people and experiences—hence, on social forces and dynamics—that, in monocular vision, are overlooked. Intersectionality fills out the Venn diagrams at points of overlap where convergence has been neglected, training its sights where vectors of inequality intersect at crossroads that have previously been at best sped through. This reveals women of color at the center of overlapping systems of subordination in a way that moves them from the margins of single-axis politics that has often set priorities for opposing inequality as if they did not exist. On this level, it addresses "the combined effects of practices which discriminate on the basis of race, and on the basis of sex" (Crenshaw 1989, 149). As a categorical corrective, intersectionality, as is well known, adds the specificity of sex and gender to race and ethnicity, and racial and ethnic specificity to sex and gender. As a recent court put it, sex and race can "fuse inextricably" so that "made flesh in a person, they indivisibly intermingle."[5] Categories that had been uniform and few become modulated and variegated as well as many. Resulting analysis

[3] See, e.g., Crenshaw (1989, 1991b), Matsuda (1991), McCall (2005), Phoenix and Pattynama (2006), Berger and Guidroz (2009), and Grabham et al. (2009). For a recent critique of the concept, see Delgado (2011).

[4] Kimberlé Williams Crenshaw explains why in "Mapping the Margins" (1991b, 1296–97). For my analysis of postmodernism, including some distinction from poststructuralism, see MacKinnon (2006b).

[5] Jeffers v. Thompson, 264 F. Supp. 2d 314, 326 (D. Md. 2003).

of the neglect of Black women by the law of rape and the content of rap lyrics (see Crenshaw 1991a) provides especially illuminating examples.[6] No longer missed are the structural, political, and representational realities of women of color (Crenshaw 1991b). Even if some people cannot seem to think more than one thought at a time, almost anyone can add.

The case of Dafro Jefferies[7] exemplifies the intersectional fix that even a superficial grasp of multiple categories can contribute. There, an African American woman claimed discrimination against her as an African American woman in a workplace that did not discriminate against all Black people or all women. All the Blacks were men, all the women were white, but Dafro Jefferies was brave.[8] Instead of denying the discrimination against her, seeing only categories of race or sex with invariant internal content, privileging the white experience of sex and the male experience of race and thereby precluding Ms. Jefferies's experience of discrimination from legal recognition, a panel of the Fifth Circuit Court of Appeals held that the combined ground of race-and-sex discrimination to which Ms. Jefferies claimed she was subjected must be recognized as a legal claim under Title VII.[9]

Then a footnote had a nervous breakdown, stating that the judge (who wrote the majority opinion) did not know how to proceed doctrinally, specifically with whom to compare a person characterized by a combined ground, and where, short of individual uniqueness, the subdividing of group categories stops.[10] The court worried about where the fix would end but did not ask where the problem started, failing to inquire into the method that created race and sex as two static categories based on the most relatively privileged occupants of each classification in the first place. It failed to examine its own assumptions, far less to consider whether shutting Dafro

[6] Crenshaw's discussion of the devaluation of Black women who are raped is a crucial contribution to analysis of the subject; see Crenshaw (1991b, 1265–82). Prior to its recent excavation by Danielle McGuire (2010), Black women's long history of antirape activism had been largely ignored.

[7] Jefferies v. Harris County Community Action Association, 615 F.2d 1025 (5th Cir. 1980).

[8] Of course, this adapts the locution of *All the Women Are White, All the Blacks Are Men, but Some of Us Are Brave* (Hull, Scott, and Smith 1982).

[9] *Jefferies*, 615 F.2d at 1034 ("Recognition of black females as a distinct protected subgroup for purposes of the prima facie case and proof of pretext is the only way to identify and remedy discrimination directed toward black females. Therefore, we hold that when a Title VII plaintiff alleges that an employer discriminates against black females, the fact that black males and white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff").

[10] Ibid., at 1034 n. 7.

Jefferies out doubly as neither Black nor a woman because she was both revealed anything more systematic in discrimination law's methodology that needed to be confronted. Instead, the problem of someone not fitting into either of two boxes was solved by creating a third box: African American women. As to anything farther or deeper, the court was lost.[11]

The legal record in the United States since, in the absence of Supreme Court instruction, has oscillated between truly getting it[12]—one court even grasped the substance of intersectional discrimination against an African American man, perceiving the ways in which the racism directed against him was stereotypically gendered[13]—and truly missing it.[14] Law is replete with missed intersectional opportunities. One vivid instance of the one-or-the-other approach is the case brought by Sandra Lovelace, in which she, as a Maliseet woman, complained that Canadian law considered her no longer a member of her nation, hence unable to live on the Tobique Reserve, because she had married out. Without ruling on her claim of sex discrimination, the UN Human Rights Committee found that Canada violated her right to enjoy her culture and use her language.[15] The

[11] Many courts before and since have been even more at a loss, a development competently traced in Areheart (2006).

[12] See Lam v. Univ. of Haw., 40 F.3d 1551 (9th Cir. 1994) (overturning district court's finding of summary judgment against Vietnamese female plaintiff on grounds that "the attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences"); Hicks v. Gates Rubber Co., 833 F.2d 1406 (10th Cir. 1987) (permitting consideration of evidence of both racial and sexual hostility in claim of hostile work environment sexual harassment by African American woman). See also Jeffers v. Thompson, 264 F. Supp. at 325 (finding African American females a "composite class" where prima facie case was established, however race-and-gender discrimination not proven even as racial discrimination and age discrimination were separately shown).

[13] Kimble v. Wisconsin Dep't of Workforce Dev., 690 F. Supp. 2d 765 (E.D. Wis. 2010) (recognizing combined race-and-gender discrimination but wrongly terming it "race plus").

[14] See DeGraffenreid v. General Motors, 413 F. Supp. 142 (E.D. Mo. 1976) (rejecting attempt by African American women plaintiffs "to create a new 'super-remedy'" for discrimination based both on race and sex); Judge v. Marsh, 649 F. Supp. 770 (D.D.C. 1986) (seeking to contain the "many-headed Hydra" purportedly unleashed by the *Jefferies* approach by limiting its applicability to "employment decisions based on one protected, immutable trait or fundamental right, which are directed against individuals sharing a second" such supposed trait); Lewis v. Bloomsburg Mills, Inc., 773 F.2d 561 (4th Cir. 1985) (refusing to certify class of African Americans with woman as representative, construing African American women as "special victims" of more general racial animus); Moore v. Hughes Helicopters, Inc., 708 F.2d 475 (9th Cir. 1983) (upholding lower court decision declining to certify African American woman as class representative in sex discrimination claim).

[15] Lovelace v. Canada, Communication No. 24/1977, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

Committee, in a somewhat intersectional but curious reference, later cited the case in its statement of principles on sex equality[16] as an instance of the equal rights of women under the International Covenant on Civil and Political Rights.[17] But culture was mentioned at this point only as an unacceptable justification for sex discrimination. The principle that culture cannot shield sex discrimination, while internationally embraced, does not recognize a woman's right to her culture in the intersectional sense. And the role of Ms. Lovelace's divorce in the original decision[18] was almost as if she became a member of her own nation only when she could no longer be seen as part of her former husband's[19]—hardly a sex equality approach. On each side, the lack of intersectionality remained.

When intersectionality becomes a method, by contrast, it aims at the moving substantive reality "where systems of race, gender, and class discrimination converge," not one or another or even all static abstract classifications (Crenshaw 1991b, 1246). The name of the problem addressed is white supremacy and male dominance, or white male dominance, not race and sex classifications, targeting the forces that create the outcomes, not just their static products. This approach exposes to critical light "the dominant framework of discrimination" (Crenshaw 1989, 152). Standard legal classifications are imagined to be the same within, different without, following Aristotle (see MacKinnon 2007, 4–5 and passim). They impose comparative statics. The conventional framework fails to recognize the dynamics of status and the power hierarchies that create them, reifying sex and race not only along a single axis but also as compartments that ignore the social forces of power that rank and define them relationally within and without. In this respect, conventional discrimination analysis mirrors the power relations that form hierarchies that define inequalities rather than challenging and equalizing them. No question about it, categories and stereotypes and classifications are authentic instruments of inequality. And they are static and hard to move. But they are the ossified outcomes of the dynamic intersection of multiple hierarchies, not the dynamic that creates them. They are there, but they are not the reason they are there.

Intersectionality, in other words, is animated by a method in the sense of an operative approach to law, society, and their symbiotic relation, by a

[16] U.N. Human Rights Committee, General Comment No. 28: Equality of rights between men and women, CCPR/C/21/Rev.1/Add.10, March 29, 2000.

[17] Ibid., ¶ 32.

[18] Ibid., ¶ 17.

[19] The equivalent US domestic case, in which the same rule was imposed by the Indian nation itself, raises a raft of additional issues. See Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). My views are discussed in MacKinnon (1987) and MacKinnon (2012).

distinctive way into reality that captures not just the static outcomes of the problem it brings into view but its dynamics and lines of force as well. It is this that makes it transformative. Moved by the energy of the synergistic interaction of the variables whose relations it exposes, intersectionality pursues an analysis that "is greater than the sum of racism and sexism" (Crenshaw 1989, 140). When this is missed, intersectional analysis of the simplistic sort as exemplified by the *Jefferies* case can create a third box yet cannot solve the problem. As intersectional work has shown since its inception, social hierarchy creates the experiences that produce the categories that intersect. Substantively, white males dominate. Domination-and-subordination is the relational dynamic that animates this structure.[20] It is this substantive grasp of forces that critical theories—when they are critical—are critical of, criticizing the "uncritical and disturbing acceptance of dominant ways of thinking about discrimination" (Crenshaw 1989, 150).

Its firm grip on the way hierarchy works as a process in motion explains why this theory is not abstract, unlike the conventional equality theory of which it is critical. It is inherently substantive[21]—hence, crucially, it does not flip. "Intersectional subordination" is a one-way ratchet, even as the analysis of it informs understanding of the status locations at both the top and the bottom of the hierarchies involved (Crenshaw 1991b, 1249). But top and bottom are not fungible, as the classifications of race and sex are constructed to be, which explains why intersectional method could reveal the white male intersectional reality behind many challenges to affirmative action that had never before been seen or questioned as such.[22] Imagining that inequalities are equal as a method for analyzing that inequality can only deny what needs to be changed. Providing an alternative to the Aristotelian approach in discrimination law has made intersectionality a method for fitting law to reality, rather than reality to law.

A primitive articulation of these insights in legal terms can be found toward the end of the Supreme Court brief in *Meritor Savings Bank v. Vinson*, the case that first established the law of sexual harassment in 1986:

> All too often, it is Black women like Ms. Vinson who have been specifically victimized by the invidious stereotype of being scandalous and lewd women, perhaps targeting them to would-be perpetrators.[n18]

[20] This awareness is manifest throughout Crenshaw's definitive works on the subject, among them Crenshaw (1989) and Crenshaw (1991b).

[21] For further discussion of the meaning of "substance" in equality law, contrasted with abstraction, see MacKinnon (2011).

[22] See Crenshaw (1989, 142 n. 12). The critics of affirmative action have recently also sometimes used white women for this purpose; see Grutter v. Bollinger, 539 U.S. 306 (2003).

> This is not to say that this is a case of race discrimination, but rather that minority race aggravates one's vulnerability as a woman by reducing one's options and undermining one's credibility and social worth. In the context of such beliefs, beliefs which animate this case, a picture can be painted which destroys the victim's ability to complain of sexual violation, such that sex acts can be inflicted upon her and nothing will be done about it.
>
> [n18] *See* generally *Continental Can v. Minnesota*, 297 N.W.2d 241, 246 (Minn. 1980) (defendant in sexual harassment case "wished slavery days would return so that he could sexually train [plaintiff] and she would be his bitch.") "Follow me sometimes and see if I lie. I can be coming from eight hours on an assembly line or fourteen hours in Mrs. Halsey's kitchen. I can be all filled up that day with three hundred years of rage so that my eyes are flashing and my flesh is trembling—and the white boys in the streets, they look at me and think of sex. They look at me and that's all they think. . . . Baby you could be Jesus in drag—but if you're brown they're sure you're selling!" L. Hansberry, *To Be Young, Gifted, and Black* (1969) at 98. Ms. Vinson's predicament suggests that while such a view may be most prevalent among white men, it is not confined to them alone. Reasons are suggested in W. Jordan, *White Over Black: American Attitudes toward the Negro, 1550–1812* (1968) at 150.[23]

In other words, Mechelle Vinson being at the bottom of the group women, distinctively sexualized for denigration based on being Black and a woman both, if equality law doesn't work for her, it doesn't work.[24]

It was Kimberlé Crenshaw's brilliant theorizing, with later contributions by others (see de Merich 2008), that subsequently did the work that made it possible to claim the racist dimensions of such sexual abuse explicitly in doctrine.[25] Without the intersectional insight animating *Vinson*, Title VII could have worked for some white women and nobody else, but if it worked for Mechelle, it could work for everyone. In fact, when she won, all women won. Thinking in this way is not thinking about race as a

[23] Brief of Respondent Mechelle Vinson, Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) (No. 84–1979), 67–69. Patricia Barry and I were cocounsel to Ms. Vinson in the Supreme Court. I wrote the brief.

[24] Ibid. That Ms. Vinson was sexually harassed by an African American man did not necessarily deprive her abuse of racial dimensions.

[25] Racial features of sexual harassment were observed from the beginning; see MacKinnon (1979, 30–31, 51, 53–54, 176–77). Since that time, numerous scholars have productively examined facets of the problem; see, e.g., Cho (1997), Davis (2004), and Hernández (2006).

variable or even as an identity but as a dynamic position in a real-world hierarchical rank ordering that, when comprehended and upended, ignites and transforms the sex-based concept. This is one reason why intersectionality is intrinsically demarginalizing and explains why Crenshaw would end her pathbreaking demarginalization article, invoking Paula Giddings, with "when they enter, we all enter" (Crenshaw 1989, 167; see also Giddings 1994). It also reveals the simple falsity of the standard post-Enlightenment opposition between particularity and universality not only in exposing that particularity is universal but in making a universally applicable change—including for men[26]—through embracing, not through obscuring or denying or eliding, particularity.

Surfacing sex in a legal analysis previously based on race or ethnicity that never noticed it can have the same effect. Intersectional method is visible in the theory of genocidal rape pioneered in *Kadic v. Karadžić*,[27] a theory now recognized internationally.[28] Conventionally, the crime of genocide has prohibited the intentional destruction of a racial, ethnic, national, or religious group as such. Not only is sex not a recognized legal basis for genocide; sex-based attacks on women of specific ethnicities, races, religions, or nationalities had not previously been seen as a way genocide can be carried out. If rape as a tool of genocide had been overlooked by those who would stop or redress its atrocities, it has not been missed by those who engaged in them, any more than the sexual dimensions of lynching were overlooked by the Klan (Cardyn 2002).

What happened when my Bosnian clients spoke out about being raped in the genocide perpetrated against them was not simply that rape of women or men was recognized in law as the weapon of genocide that it is in life, although that did happen. What happened was that the destruc-

[26] See Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998).

[27] Kadic v. Karadžić, 70 F.3d 232 (2d Cir. 1995). To avoid confusion, this approach is to be distinguished from the concept of gynocide, in which women are destroyed because of their sex, as first stated by Mary Daly (1973, 194) and subsequently developed by Andrea Dworkin, as the "systematic crippling, raping and/or killing of women by men, . . . the word that designates the relentless violence perpetrated by the gender class men against the gender class women" (1976, 16), to which there is as yet no precise legal equivalent. The closest would be if the Genocide Convention recognized sex and gender as grounds for destruction of peoples as such, recognizing women as a people. The concept of gender-based persecution, a crime against humanity in the Rome Statute of the International Criminal Court (last amended January 2002), 17 July 1998, A/CONF. 183/9, Article 7 (1) (h), embodies a close concept as well. Gynocide could readily combine with intersectional insights, but its analysis was not explicitly intersectional when originally written.

[28] See Prosecutor v. Akayesu, Case No. ICTR-96–4-T, Judgment (Sept. 2, 1998), §7.8; Prosecutor v. Al Bashir, Case No. ICC-02/05–01/09, Second Arrest Warrant (July 12, 2010).

tion of the women of an ethnic community through rape was recognized as destroying their community as such. Genocide was not marginalized; instead, women were made central in its more capacious frame. Those in genocides who had been marginalized—sexual abuse with impunity devaluing them here as elsewhere (see Crenshaw 1991b, 1271)—were placed at the center of the crime of crimes, simultaneously, even miraculously, making allegations of its existence in this instance credible. In the absence of this intersectional way of thinking, the rape of African American women has often not been seen as the assault on the Black community that it is (1273), nor have the specifically gendered dimensions of the lynching of Black men generally been grasped. In the *Kadic* case, the Bosnian Muslim people as such were seen as violated because Bosnian Muslim women (and some men) were raped. Their collectivity was legally seen as subjected to a genocide, to its willed destruction as a people as such, because the women of that community were understood to have been sexually violated as members of it.

The point here is not that they were not seen as being violated as women. Actually, they were, and knew they were, although international criminal and humanitarian law did not yet recognize it. What changed through this practice of intersectional method was the understanding of genocide itself: mass rape can be what a genocide in progress looks like. This insight, which included their awareness of the perpetrators' exploitation of the age and disabilities of some of them, came directly from the survivors. The fact that this genocide was in part conducted through gender crimes did not mean that the acts were not also ethnically and nationally and religiously destructive. It meant that they were.[29] And it was exposing the gender-based crime that, in this instance, substantiated and made credible the claim of genocide.[30]

A violation that had been seen as just something men do to women all the time,[31] even trivialized as surplus repression, was in this case reconfigured by law as the weapon of genocide its perpetrators knew it to be and

[29] This issue is discussed further in MacKinnon (2006a).

[30] Some Muslim men were also sexually assaulted by Serbian forces, further supporting the claim of genocide and revealing the potential of an intersectional approach. The International Court of Justice—wrongly, in my view and in that of the survivors—determined that the conflict was not a genocide except for the attack at Srebrenica. The court regarded the evidence of intent to destroy a people as such to be inadequate. See Concerning Application of Convention on Prevention and Punishment of Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 I.C.J. 43 (Feb. 26).

[31] As I wrote of sexual atrocities while litigating *Kadic*, "Whether in war or in what is called peacetime, at home or abroad, in private or in public, by our side or the other side, man's inhumanity to woman is ignored" (MacKinnon 1993, 60).

deployed it as. When its intersectional reality was surfaced and believed, a vast underworld of violated women who had been unnamed and unspoken moved into the legal center. Again, the target of this realization is not the subjectivity of the victims in the psychological sense; it is the reality of their status. It is not their identity that is problematic or problematized but the consequences of how they are socially identified and hence treated. If the *Jefferies* case had thought intersectionally, it would have compared the plaintiff's treatment with that of white men, moving her to the center. But more to the point of method, if Title VII had thought intersectionally, it would never have been in the doctrinal quandary the *Jefferies* case found itself facing in the first place, where it remains largely mired.[32] Discrimination against a person consigned to the bottom of two fused hierarchies would have made Ms. Jefferies the first and foremost and most evident case in discrimination law, not an afterthought to it in "a location that resists telling" (Crenshaw 1991b, 1242).

Lucidly, Crenshaw distinguishes thinking intersectionally from thinking about intersecting categories when she points out that "Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women" (Crenshaw 1989, 149). This clarification of the eternally crucial yet deceptively simple term "as" in discrimination law does not end with Black women. That the location of departure and return for the analysis is on the ground, with the experience of a specific group, this group in particular, and not in universal generalizations or in classifications or abstractions in the clouds, even ones as potentially potent as race and sex, is the point. Thus capturing the synergistic relation between inequalities as grounded in the lived experience of hierarchy is changing not only what people think about inequality but the way they think.

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[32] Best et al. (2011) document empirically that women disadvantaged by both sex and race discrimination, as well as those who make intersectional claims, tend to fare less well in courts than those who were discriminated against on a single basis or those who claim one ground of discrimination alone.

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