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Intersectionality and the Feminist Project in Law

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INTRODUCTION

In recent years, the focus of feminist studies has shifted away from the concept of gender as an isolated category of analysis towards a concern with the way in which gender intersects with other categories of identity for purposes of understanding and combating inequality. This shift is in large part spawned by rejection within feminism of 'essentialist' invocations of sex and gender and the corresponding collapse of the category 'woman' as a core unit of feminist engagement and critique. As such, it may properly be welcomed in its promise to provide more effective ways of tackling the complex and diverse manifestations of inequality which women experience. At the same time, it is arguable that the conceptual and analytical framework generated by 'intersectional' approaches has not proved adequate to this challenge and has been dogged by difficulties of application and delivery in the context of feminist theory and strategy.

The object of this chapter is to explore the implications of intersectionality for the feminist project in law. By 'project' I do not mean to suggest that feminist engagement with law is reducible to a fixed set of objectives and strategies. Rather, I use the term in the sense articulated by Duncan Kennedy: 'a project is a continuous goal-oriented practical activity based on an analysis of some kind... but the goals and analysis are not necessarily internally coherent or consistent over time' (Kennedy 1997: 6). While undoubtedly characterised by divergence in normative, theoretical and strategic approach, feminist legal engagement is, broadly speaking, a practical activity designed to engender, directly or indirectly, socially transformative processes and effects. It follows that part of the value (or otherwise) of intersectionality lies in the possibilities for and effects of its practical deployment. I want to suggest that although intersectionality has been an important dimension of feminist theory and strategy in recent years, it has now reached the limits of its potential. There is nothing more that it can do to advance the feminist project, whether in law, or more broadly. This is not an uncontroversial assertion and it should be emphasised at the outset that it does not imply any rejection of the

view that inequality is complex and multifaceted. It is however to suggest that intersectionality does not adequately get at that complex multiplicity; it cannot unpick or unravel the many ways in which inequality is produced and sustained. Part of the problem lies in the fact that, as a frame of reference, intersectionality has its roots in law. Therefore, the limits of law and legal engagement infuse and constrain intersectional approaches. If we are truly to get to grips with the problem of inequality we need to develop more effective analytical and strategic tools. This requires consideration of other perspectives which have engaged with and sought to account for unequal social relations, including approaches which have been overlooked or rendered theoretically 'suspect'.

The first part of this chapter traces the evolution of intersectionality analysis as a response to perceived limits in feminist theory and politics, highlighting its legal derivation – which accounts in large part for the grid-like aesthetic to which it adheres - and evaluating its deployment as a feminist theoretical tool beyond the narrow confines of legal doctrine. The second part of the chapter excavates earlier efforts to theorise interrelations of gender, race and class within the context of encounters between Marxism and feminism. The section explores the character and contours of materialist feminist debate on gender, race and class to exemplify how intellectual, theoretical and political context can shape the way in which problems are conceived and understood. The chapter concludes with an emphasis on the importance of recognising the contingency of our conceptual and analytical frameworks, arguing that a failure to do so may impede a broader understanding of the issues we address. A focus on alternative ways of thinking about and theorising unequal social relations helps to highlight the limitations of intersectionality as a way of making sense of (gendered) inequality while at the same time providing additional analytical tools in the context of strategic engagements with law.

INTERSECTIONALITY: A FEMINIST LEGAL STORY

Origins

The modern roots of intersectionality lie in anti-essentialism although the issues to which intersectionality gives rise have been the focus of feminist theorising for much longer. Anti-essentialism emerged in feminist theory in the late 1980s, producing a cluster of texts which were to become seminal in the feminist legal canon (Fuss (1990); Harris (1990); Spelman (1988)). Much of the critique was driven by the concerns of women of colour who argued that mainstream feminist discourse was predicated upon and thereby privileged the experiences of white women. Just as women's experiences were overlooked through the 'universalization' of men's, so also were the experiences of women of colour eclipsed by feminist attendance to white women's interests and concerns: the 'woman' of feminism was, for most purposes, white; whiteness was part of the 'essence' of womanhood which feminism represented.

The critique of essentialism activated a series of separate but related political and theoretical concerns (Hunter (1996); Conaghan (2000)). There emerged a growing recognition of the need to broaden the representational base of feminism to take better account, substantively and strategically, of differences between women.

There was also detectable a new willingness among feminists to interrogate their own theories and methodologies, in particular, to problematize the invocation of women's individual and shared experience as the epistemological base of feminist theoretical knowledge. Finally, there arose a keen suspicion of categories - of categories in general and of the category 'woman' in particular (Butler 1990). This was in part because of a desire to avoid importing undesirable essences into feminist theory; but, increasingly also, it entailed the rejection of the idea of essence itself, the eschewal of any notion that categories possessed a pure, incontestable core independent of discursive context. It followed that gender categories had no 'authentic' content nor was there a gendered reality which feminist theory could represent. Feminism was without a subject.¹

In some ways, intersectionality constituted a response to the concerns to which anti-essentialism gave expression. In other ways, it was a restatement of those concerns but one perceived to have the potential to move debate beyond the theoretical and political stalemate to which anti-essentialism seemed inexorably to lead. As Rebecca Johnson observes: 'The point was, as intersectionality theorists reminded, that anti-essentialism for its own purpose was a weak insight... To have any political value, the critique had to be combined with a strategy of anti-subordination. Intersectional theory attempts to do just that' (2005: 29).

In 1989, in an article by Kimberle Crenshaw, intersectionality received its inauguration. Speaking about black women's experience of discrimination, Crenshaw commented:

Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction and it may flow in another. If an accident happens at an intersection, it can be caused by cars travelling from any number of directions and, sometimes, from all of them. Similarly, if a black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination (Crenshaw 1989: 149).

Crenshaw argued that black women were located at the intersection of racism and sexism. Their experiences were thus the product of both and equivalence of neither. The reliance of anti-discrimination law on a 'single-axis framework' (Crenshaw 1989: 139) in which separate claims could be made on the basis of race or sex but not in combination, deprived black women of a legal remedy in relation to their particular experience of discrimination as black women.² At the same time, precisely because that experience was perceived by the courts to be a 'hybrid' rather than 'pure' form of race or sex discrimination, it rendered black women ineligible class representatives of women or black people for anti-discrimination law purposes,³ their intersectional identity being seen to overwhelm the assumed single identities of anti-discrimination complainants. In these somewhat contradictory ways (Crenshaw 1989: 148-150) black women's

¹ I use this term in a dual sense to denote the actor/speaker/agent of feminist discourse and the object/field/area of study. Anti-essentialism addressed and problematised both.

² See Crenshaw's analysis of *De Graffenreid v General Motors* 413 F Supp 142 (E D Mo 1976) (Crenshaw 1989: 141-143).

³ See Crenshaw's analysis (1989) of *Moore v Hughes Helicopter* 708 F2d 475 (9th Cir 1983) and *Payne v Travenol* 673 F2d 798 (5th Cir 1982) at 143-150.

multidimensional experience of discrimination became theoretically and practically erased from the doctrinal framework.

It is worth pausing for a moment to consider the imagery that Crenshaw deploys to support her claims in this context: it is the imagery of lines and planes, crossings, and coordinates. Mathematical and cartographic references are not infrequently deployed in anti-discrimination law discourse. Indeed, it is common legal parlance to talk in terms of ‘axes’ or ‘vectors’ of discrimination while, in the application of equality norms, lawyers make frequent recourse to ‘equations’ of similarity and difference (Stafford 2001: 30). Emily Grabham, among others, argues that cartographic methods are widely deployed in legal discourse, infusing processes of legal categorisation and functioning as techniques for reducing the messiness of people’s lives into ‘intelligible legal frameworks’ (Grabham 2006: 7). Similarly, Pierre Schlag, in his analysis of the role of aesthetics in shaping our perception and apprehension of law, highlights the continued grip of what he calls the ‘grid aesthetic’ in legal thought: ‘In the grid aesthetic, law is framed as a field, as a territory, a two-dimensional space that can be mapped and charted’ (Schlag 2002: 1047). While acknowledging the early twentieth century to be the historical high point of this particular aesthetic, manifest in formalist/ ‘scientific’ approaches to law (ibid.: 1053), the grid, Schlag insists, continues to leave its mark on modern jurisprudence, encouraging the demarcation of law into bounded legal spaces whose proximity and interrelation can be comprehensively charted and explored.

Intersectionality⁴ is a concept closely entwined with mapping processes, locating points of crossing and charting their significance within a broader legal and theoretical topography. Cartographic imagery therefore cannot help but infuse our thinking around the cluster of issues of which intersectionality discourse is comprised. However, the correspondence with mapping is more than metaphorical. By framing it in this particular way, the problem of intersectionality is ‘brought into being’ (Schlag 2002: 1053) *as a problem of representation*. Thus, it is no surprise that a primary concern of intersectionality analysis is with how law represents women’s experiences. Indeed, much of the work on intersectionality can be understood as a critique of the ‘map’ of gender inequality offered by law and legal feminism, accompanied by calls for a better representation, a richer topography of women’s lives. This becomes apparent when we consider the development and application of intersectionality discourse by feminist legal scholars.

Development

An immediate concern for Crenshaw was to identify remedial gaps in relation to black women’s experiences of discrimination. This theme has continued to inform doctrinal engagements with intersectionality with a number of scholars taking up and developing Crenshaw’s critique in their own jurisdictions.⁵ However, the

⁴ The term ‘intersect’ comes from the Latin *intersecare*, ‘to cut between’. It has been used in English to denote a place of crossing or passing through since at least the 16th century. The application of the term to the place where streets cross is first recorded in the mid-nineteenth century in the writing of Nathaniel Hawthorne (Barnhart 1988: 539). Crenshaw is not the first scholar to use the idea of an intersection in equality analysis; however, she is generally credited with having launched it as an analytical framework, particularly within law.

⁵ See e.g., Duclos (1993), Iyer (1993), Pothier (2001) (Canada); Ashiagbor (1999), Hannett (2003), McColgan (2006) (UK); and Schiek (2005) (Europe). See also Shoben (1980) for an early engagement with the problem of ‘compound discrimination’ (note the mathematical terminology) from which Crenshaw draws. Strikingly,

problem for Crenshaw went beyond the doctrinal boundaries of anti-discrimination law. The real difficulty, she argued, lay in ‘the tendency to treat race and gender as mutually exclusive categories of experience and analysis’ (Crenshaw 1989: 139). This tendency underpinned anti-discrimination law but also infused feminist theory and politics more generally. By failing to develop an analytical framework which recognised and/or took account of experiences at the intersection, feminism was both conceptually limited and politically distorted. It privileged the concerns of white women, adopted a ‘top-down’ model of subordination (in which the experiences of the least subordinated in the subordinated group - white women - became the measure of subordination overall) and thereby failed to get to grips with the complex ways in which racism and sexism worked through one another to produce forms of subordination with which feminism – and anti-racism – unwittingly conspired.⁶

In a second article, Crenshaw (1991) further developed her critique, focusing on the relationship between intersectionality and identity politics. Noting a tension between negative and positive deployment of identity categories – on the one hand, as a source of powerlessness and subordination, on the other, as a route to social and political empowerment - Crenshaw argued that identity-based political engagement was similarly hampered by a single-axis framework:

The problem with identity politics is not that it fails to transcend difference, as some critics charge, but rather the opposite – that it frequently conflates or ignores intragroup differences (Crenshaw 1991: 357).

Crenshaw called for ‘recogni[tion] that identity politics take place at the site where categories intersect’ (ibid: 377) and sought to adapt the framework of identity politics to take better account of experiences which were the product of intersecting identities. She placed this argument in the context of violence against women, showing how intersecting patterns of sex and race-based subordination shaped and informed women’s experiences of violence in ways rarely recognised by the gendered experiential norm (ibid: 359). Crenshaw also highlighted the risk of political conflict between identity groups if intersectional issues were not adequately addressed (ibid: 367-374). The overall thrust of her critique was not the abandonment of categories such as race and sex, nor the rejection of identity politics; rather, her purpose was to develop a theoretical and political framework which was attentive to intersections of subordination, which ‘mapp[ed] the margins’ of identity. Her work was strongly embedded in the practical application of feminist theory and politics and her primary concern was to facilitate more effective strategic engagement with law.

Crenshaw’s deployment of the language of intersectionality soon caught the attention of other feminist scholars. Alongside direct engagement with anti-discrimination regimes, scholars began to test the theoretical potential of intersectionality other than at the race/gender interface and in relation to categories

nearly two decades later, the conceptual and remedial deficiencies which Crenshaw highlighted remain a problematic feature of most anti-discrimination regimes (Conaghan 2007).

⁶ Crenshaw’s example here is feminist engagement with ‘separate spheres’ ideology which, she argues, has limited purchase when applied to the lives of black men and women, particularly against a historical background of slavery, failing to tease out way in which gender norms cross-cut and reinforce race-based subordination (1989: 155-156).

beyond the conventional reach of anti-discrimination law, for example, sexuality (Eaton 1994; Arriola 1994) and class (Hutchinson 2001). A central theme in much of this analysis is the failure of law to capture the complexity and fluidity of identity and the implications of this failure for progressive theory and politics. Thus, the work is illustrative and elaborative of precisely the kind of tensions between the positive and negative deployment of identity categories that Crenshaw signalled (1991). At the same time, one can detect a gradual shift away from practical questions of legal and political strategy (exemplified in Crenshaw's work) towards more abstract consideration of the nature of identity and its (mis)representation in legal discourse.

This is particularly evident in Trina Grillo's much-cited article published in 1995. For Grillo, intersectionality is deeply bound up with identity which law renders separate and fragmented: 'a fragmenting entirely at odds with the concrete life of [a] woman' (Grillo 1995: 17). In this, Grillo's analysis coheres more or less with Crenshaw's. However, for Grillo, the power of intersectionality lies in its potential to give voice to the individual, multidimensional subject who finds herself 'unable to speak' within paradigms of thought which posit identity as singular and one-dimensional:

Each of us ... sits at the intersection of many categories. She is Latina, woman, short, mother, lesbian, daughter, brown-eyed, long-haired, quick-witted, short-tempered, worker, stubborn. At any one moment in time and space some of these categories are central to her being... Some categories, such as race, gender, class and sexual orientation, are important most of the time. Others are rarely important ... yet, if we turn the traditional tools of legal analysis upon this woman, we find she is someone entirely different. She is fragmented, capable of being only one thing at a time (ibid).

The thrust of this analysis is to posit identity as forever fluid and multifaceted, possessing a dynamic, unstable quality stifled by the application of unidimensional, hierarchically-conceived group classifications. The repressive results are individually and distinctly experienced by those who struggle to 'fit' core identity paradigms. Intersectionality is thus a way of making sense of a world which appears constantly at odds with our concrete lived experiences. These experiences include the confusion and discomfort we feel when 'official' versions of truth do not correspond with our own perceptions or the sense of ruptured despair arising when parts of ourselves – our ethnicity and sexuality perhaps - are pitted against each other. At the same time, intersectionality places limits on the significance and reach of individual experience, our very complexity providing us with a unique but inevitably 'limited view of the world' (ibid: 22) an authentic view but not, in any fundamental sense, a privileged one.

Grillo's analysis is highly resonant of multiple inequality experiences. However, the political implications are somewhat troubling. Her focus on the particularity of individual experience might be said to leave little room for organised, collaborative initiatives; her analysis certainly stands as an account of why collective identity-building initiatives are so difficult to accomplish. What then is her political strategy? In so far as a strategic dimension can be gleaned, it focuses on combating the

silencing effects of mainstream identity discourses, discourses rendered legitimate, *inter alia*, by their deployment in law:

In the end, the anti-essentialism and intersectionality critiques ask only this: that we define complex experiences as closely to their full complexity as possible and that we do not ignore voices at the margin (Grillo 1995: 20).

Intersectionality thus emerges as a theoretical and political response to individual, experiential complexity and to the essentialising tendencies of law with respect to it. In addition, intersectionality offers the possibility of resisting the repressive effects of such essentialism by directing us to a discursive space in which representing complexity – particularly with regard to subject/identity formation – becomes a key theoretical and political object.

Applications

Grillo's analysis signalled an increasing preoccupation within legal feminism with representations of individual experience, in particular, with the lack of correspondence between legal accounts of the social world and the 'real experiences' of 'real people' (Pothier 2001). While recognising that this is a general problem deriving from law's tendency to 'compartmentalise' – , that is, to require experience to fit within 'prefabricated' legal categories (Iyer 1993) - feminists contend it is of particular concern in an intersectional context because the 'problem' of intersectionality appears to flow directly from the limits of the relevant categorical structure. This not only problematizes encounters with law, leaving individual claimants 'with a sense that they have been "disauthenticated"' by the legal process (Grabham 2006: 7), it also highlights the extent to which our expectations of law are linked to a particular understanding of the relationship between law and life. To a significant extent, law derives legitimacy from belief in its capacity to govern the messy complexities of everyday existence. This presupposes that law accurately captures and reflects those complexities; that they are, in some sense, within the sphere of law's operation.

Such an understanding confers upon law considerable authority as a purveyor of 'truth'. Law's representations are perceived to be 'authentic', its narratives assumed to bear some correspondence to social occurrences and phenomena. At the same time, where such correspondence is absent or difficult to glean, law may be criticized for its failure adequately to represent the real. In this way, law becomes both a source of truth as well as a site for contesting its production, drawing feminists and other progressive activists into legal engagement, not just as a remedial strategy but also as a forum for the discursive reconstruction of meaning and understanding.

This approach characterises Lise Gotell's evaluation of the litigation strategy of the Women's Legal Action and Education Fund (LEAF) in relation to the Canadian Charter of Rights and Freedoms. Gotell notes a shift in LEAF's approach during the 1990s from singular to more complex presentations of women's experience which she welcomes, not only for providing an opportunity within law for articulating accounts capable of displacing the limited and repressive categorical ordering currently governing understandings of inequality, but also for their

potential to call into question law's foundationalism through a discursive emphasis on complexity and contingency. Implicit in Gotell's stance is an acknowledgement of the *performative* dimensions of law, the way in which law and legal categories work to confer meaning and to shape (and limit) understanding, contributing to processes of social identity formation which repress or deny intersectional experiences.⁷ Intersectionality analysis thus becomes located within a particular critical and theoretical approach which posits law as a discourse with active, constitutive effects in relation to meaning and understanding, identity and subjectivity, inequality and subordination with much of the current legal scholarship on intersectionality falling within this frame.⁸

There is nothing wrong with this approach; it highlights a particular and important aspect of law's implication in unequal social relations and offers strategic possibilities for countering law's repressive, inegalitarian effects. However, as an analytical tool, intersectionality has limited theoretical and strategic purchase in this context, serving as little more than an *exhortation* to take account of complexity in considering processes of social identity formation. Thus, for example, Maneesha Deckha characterises intersectionality as a feminist norm which requires us to 'pay[] attention to how multiple social forces, such as race, class, gender, age... shape our experiences' (2004: 16). Rebecca Johnson asserts that it compels a 'focus on the very specific ways that gender intersects with ... other dimensions in women's lives' (Johnson 2005: 29). Johnson goes on to assert that 'the point of this focus has not simply been to document difference... the point ... is to see whether or not the experiences of those located at the intersections can provide insights crucial to the construction of better theories' (ibid.) And therein lies the challenge: *does* intersectionality produce better theories? And better theories of what?

In my view, intersectionality is rather limited in its theory-producing power. In particular, while it acts as an aid to the excavation of inequality experiences at a local level, it tells us little about the wider context in which such experiences are produced, mediated and expressed. Experiences of inequality are much more diverse and complex than the relations and processes from which they derive; yet intersectionality does not engage in any sustained way with these relations and processes. Moreover, it tends to discourage any serious efforts to relate experiences on the ground with broader consideration of the social and legal context in which they occur, the focus on the local acting as an injunction against what Kathi Weeks describes as 'the aspiration to totality', understood in a minimal sense as 'the methodological mandate to relate and connect', which Weeks asserts to be a positive, indeed necessary, aspect of theoretical enquiry (1998: 71). In sum, intersectionality is far too modest in its theoretical ambitions, it is unduly circumscribed in its perception of what theoretical work may entail. Thus, it is as likely to close off enquiry as to open it up, particularly where it involves consideration of gender or race not as aspects of identity but as core structural components of a regulatory framework such as law.

⁷ Of course, this repression or denial is rarely absolute. After all, law 'performs' alongside/in combination/in conflict with other performative processes in the context of social relations in which one's intersectional location is often likely to be of material significance. What is important is the legitimacy accorded to legal truths, contributing to a lack of official recognition of particular aspects or experiences of inequality.

⁸ See e.g., the essays in Chunn and Lacombe (2000) and MacDonald et al (2005).

Indeed, I would argue that intersectionality has become too bound up with notions of identity and identity formation. Within feminist legal scholarship in particular intersectionality has taken a strong ‘identity turn’ (see e.g. analyses of Grillo 1995; Wing 2000). While undoubtedly an important dimension of inequality analysis, issues of identity are but an aspect, not a substitute for, fuller investigation into the operation of gender and race within inequality regimes within which identities are formed, navigated and resisted. In addition, the concept of identity is less suited to certain kinds of analysis. Take, for example, the uneasy status of class in intersectionality discourse. At best, class functions rather crudely in intersectionality analysis as an unexplored signifier of socio-economic inequality. Notwithstanding efforts by some intersectionality scholars to incorporate it more deeply into their analyses (Hutchinson 2001), the literature as a whole fails to do. This is in part because class is a concept which predates identity politics but it is also because class does not typically function as an identity category.⁹ Traditionally, and particularly in a Marxist context, class has been understood in *relational* rather than *locational* terms, that is, as an expression of ‘objective’ relational structures rather than ‘subjective’ located experiences. While this does not preclude acknowledgment of the role of experience in shaping the formation of class identity – in Marxist terms, ‘consciousness’ – this process must be understood in close association with the operation and effects of social relations of production (Meiksins Wood 1998: chapter 3). While identity analyses tend to highlight experiences of inequality and law’s characterisation of and response to those experiences, class discourse tends to focus on the structured processes and relations which produce and mediate experience. These tendencies are by no means fixed or absolute and it is perfectly possible (and not unusual) to engage with processes and relations in the context of enquiries into identity formation. However, because law is embedded in a liberal individualist paradigm it is not an ideal site for this kind of interrogation. Hence the difficulties with according class any kind of legal significance.

For similar reasons, identity discourse also limits the reach of gender inequality analysis. In a politics of identity framework, gender is positioned within a model of social relations in which different groups clamour for recognition and access to political power. As a result, the specificities of gender disadvantage, for example, the centrality of labour in structuring patterns of gender relations, is at risk of being overlooked or marginalized. Moreover a strong political emphasis on issues of recognition can lead to a neglect of economic and distributive issues – which remain a crucial dimension of gender inequality, – as well as a failure fully to explore the interrelation of recognition and redistribution concerns (Fraser and Honneth 2003). Finally, and particularly in a legal context, the focus of identity engagement is overwhelming rights-oriented with all the attendant limitations of rights discourse as an emancipatory strategy.¹⁰ This includes the emergence of seemingly irresolvable rights ‘conflicts’, for example, between the equality rights of religious groups and those of gays and lesbians, conflicts which intersectionality

⁹ This is not to suggest that class cannot function as signifier of identity (see e.g., Skeggs 1997) but it is to acknowledge particular difficulties which derive from the context in which class emerged as a social theoretical category (see further below).

¹⁰ See e.g., Razack (1999) highlighting the ways in which rights discourse can disguise forms of domination.

cannot easily resolve precisely because of the reliance of rights discourse on the *identification* of rights-bearers (Conaghan 2007).

Thus, although intersectionality purports to be a critique of identity politics, the concept of identity for the most part retains its centrality as a core unit of analysis, with gender, race and other inequality 'grounds' being repositioned as 'dimensions' of identity which law fails adequately to capture and reflect. This prompts calls for further delineation of identity categories. For example, Adrienne Katherine Wing, in elaborating a notion of 'multiplicative identity', argues:

To assist women of colour we need to delineate their multiple identities, examine how those identities intersect to privilege or lead them to face discrimination, and then design multidimensional programs that would enhance their life situations (2000:8).

This seems a project of limitless scope and limited promise. Not only does it preclude the deployment of equality categories in other ways, for example, to explain or elaborate structures, relations and/or processes of inequality, it ensure that the focus of intellectual, political and legal energy is directed towards the infinite elaboration of inequality subgroups, engendering a slow but steady march towards conceptual fragmentation and, ultimately, dissolution. In the meantime, other ways of thinking about and theorizing the problem are lost from view.

MATERIALISM FEMINISM: REPORTS ON WOMEN'S SUBORDINATION

The Tradition of Historical Materialism

In 1975, Gayle Rubin commented: 'There is no theory which accounts for women's oppression with anything like the explanatory power of the Marxist theory of class oppression' (Rubin 1997: 29). In so pronouncing, Rubin offers an account of why feminists were attracted to Marxist theory notwithstanding the relative lack of attention which Marx himself paid to women's situation. Marx's analysis of class oppression had enormous theoretical and political purchase. By offering a way of thinking about social organization and structures, it challenged the view that social hierarchies were natural and pre-ordained. Moreover, it provided effective tools for engaging in sweeping, yet contextually detailed, historical analyses of the genesis and development of relations of subordination, the focus on class highlighting the lack of a similar developed analysis in relation to sex/ gender.

During the 1960s and 1970s, class-based initiatives formed the core of organised resistance to the social and political order. In a period in which, in the USA and UK, left wing activism was enjoying a resurgence, it is hardly surprising that the burgeoning Women's Liberation Movement should find its feet in the course of a 'critical dialogue with a broader left movement fighting for a more egalitarian world' (Segal 1999: 4) or that second wave feminist theory should be so closely aligned to the anti-capitalist struggle. Even liberal feminist approaches, with their emphasis on state-initiated reform, relied significantly for support on trade unions and other class-based organisational forms, with many feminists choosing to pursue the somewhat schizophrenic path of simultaneous revolution and reform. Lynn Segal captures the spirit of feminist politics at the time, observing:

Women's liberation was a *theory and practice of social transformation*, full of all the embroiled and messy actions, hostilities and compromises of collective political engagement. For the most part it manoeuvred within a broader culture of the left: refusing to separate women off from wider struggles against inequality and subordination, but fighting the perpetual marginalisation or neglect of what were often women's most specific interests and concerns (Segal 1999: 15).

In this sense, second wave feminism was, to a significant extent, an intersectional project, one which sought to explore and delineate, with a view to offering a theoretical synthesis of, the complex interconnections between class and sex-based oppression, primarily - although by no means exclusively – through engagement with historical materialism, at that time the prevailing social theoretical tradition.

In 1980 Iris Marion Young describes a materialist account 'as one that considers phenomena of "consciousness" – e.g. intellectual production, broad social attitudes and beliefs, cultural myths, symbols, images, etc - as rooted in real social relationships' (Young 1997:105). In this Young aligns herself with a philosophical tradition which understands mind to derive from matter, that is, views ideas as consequential upon social relations rather than social relations resulting from ideas, a perspective also underpinning Marx's critique of Hegelian idealism in *The German Ideology*:

Men are the producers of their conceptions, ideas etc – real, active men, as they are conditioned by a definitive development of their productive forces and of the intercourse corresponding to these... Consciousness can never be anything else than conscious existence, and the existence of men is their actual life-process (Marx 1983: 169).¹¹

For Marx, a focus on 'the life-process' entailed engaging with 'real individuals, their activity and the material conditions in which they live' (ibid: 163), specifically with those activities and relations necessary to ensure the production of the means of subsistence. It is in this context that labour - and the structures and processes surrounding labouring activity – emerged as a primary object of analysis, including, Marx argued, in relation to historical enquiry:

The first historical act is ... the production of the means to satisfy [men's basic] needs, the production of material life itself... The first necessity therefore in any theory of history is to observe this fundamental fact in all its significance and all its implication and to accord it due importance.

¹¹ A central preoccupation of postmodernism was to challenge what was viewed as the over-determinism of materialism by highlighting the role of the discursive realm in constituting 'real relations'. However, in so doing, many postmodernist theorists lost sight of the possibility that the relationship between mind and matter may be two-way. As a result, our theoretical access to the 'material' world is now dominated by a focus on the cultural production of meaning, and a fuller understanding of the inter-relation (dare I say 'intersection') of cultural and material production has been slow in emerging. Ironically, within the tradition of historical materialism, a two-way relationship has long been acknowledged, as for example, in E.P. Thompson's characterization of 'social being' and 'social consciousness' as in 'dialogue' (1978: 9).

From these beginning came historical materialism, a theory of history which not only sought to explain the world but also, as Marx famously remarked in his *Theses on Feurbach*, 'to change it' (Marx 1983: 158). Thus, historical materialism was an ethical and political practice, an engagement with history which viewed class struggle – and, in particular, the political organization of the working class – as the means by which social transformation could be achieved.¹² While perhaps aspiring to offer a 'total' theoretical account of historical and social change (although see Weeks, above), the merits of historical materialism lay in its emphasis on historicity and contingency from which capitalism emerged not as a set of universal relations but as a specific mode of production and exchange. Historical materialism was not a tradition which forsook detail and context in favour of abstract postulates and pronouncements; rather it entailed the careful analysis of 'historically constructed social and political life with all its complexity, multiplicity of tensions and lack of linearity' (Rupert and Smith 2002: 3). Thus was the theoretical stage set when feminism intervened.

Materialist feminism

Early second-wave feminism comprised at least two theoretical moves. The first was to offer an account of women's oppression which cohered with Marxist analyses of capitalist social relations. Taking their cue from the theoretical terrain in which they found themselves, many feminists sought to expand the parameters of materialism to encompass issues of women's subordination. The second¹³ was to devise a distinct explanatory framework, for example, accounting for women's oppression in terms of 'patriarchy' (Hartmann 1997) or 'the sex/gender system' (Rubin 1997), although even in these contexts the theoretical approach tended to mirror Marxism, whether in terms of form, substance, or both. Radical feminism was perhaps the theoretical stance most distant from Marxism, focusing on psycho/sexual factors rather than labouring practices and engaging less with the question of how class and gender oppression interrelated (Mitchell 1975; Firestone 1974; Millett 1977).¹⁴ At the same time, most radical feminists were sympathetic to and certainly conversant with class analysis and in this sense the distinction between 'socialist' and 'radical' feminists was far from clear-cut.¹⁵ What is apparent is that virtually all feminist theoretical engagement took a form which mirrored historical materialism and, in that context, the theoretical work most closely attentive to what we might now understand as intersectional issues was socialist and/or materialist feminism as it addressed directly the relation between class and gender in a theoretical and political context.¹⁶

¹² This analysis provides the origin of standpoint theory which feminists subsequently took up and developed in a gender context (Hartsock 1985).

¹³ There was also a third 'move', i.e., to analyse women's situation within traditional liberalism, e.g., by asserting their equal status as autonomous individuals in an atomized society. Most feminist legal engagement took this form but it produced little in the way of sustained theoretical engagement.

¹⁴ Although Firestone's analysis of reproductive labour practices highlights the difficulties of drawing strict lines between materialist and radical feminism (see further below).

¹⁵ See e.g., the 1977 statement of the Combahee River Collective, a group of Black lesbian feminists, discussed below.

¹⁶ The tendency to equate 'socialist' and 'materialist' perspectives in much of the theoretical literature (itself a product of Marx's appropriation and deployment of the concept of the material) does not preclude recognition of the *materiality* of sex (Hennessy 2000). In practice though, it did contribute to the development of a theoretical frame in which sexuality was located in the 'cultural' rather than in the 'material' domain (Weeks 1998).

An early but significant intervention came from Mariarosa Dalla Costa in 1972. Dalla Costa (1997) argued that women's unpaid domestic labour, by reproducing labour power, contributed directly to the production of surplus value.¹⁷ She thus identified a material dimension to women's oppression in the capitalist production process and offered a political rationale for a feminist-anti-capitalist alliance. However, Dalla Costa did not offer an account of women's oppression outside a capitalist framework; nor did her theory explain why it was *women* who engaged in the necessary reproductive work (Rubin 1997: 30-31). The logic of her argument, in terms of political strategy, was to equate women's liberation with the overthrow of capitalism, while theoretically it allowed for the subsumption of feminist concerns within a Marxist framework. This left little room for the development of an autonomous feminist political or theoretical stance.

A number of feminists responded to these deficiencies by offering a separate account of women's subordination. Rubin, for example, drew upon anthropological studies to develop an account of the 'sex/gender system' which she described as 'a set of arrangements by which society transforms biological sexuality into products of human activity, and in which those transformed sexual needs are satisfied' (1997: 28). According to Rubin, sex/gender systems were a feature of all societies although, as social and cultural products,¹⁸ they varied significantly. However, because sex was closely related to basic human needs they did need to fulfil certain minimum functions: 'A human group must ... reproduce itself from generation to generation. The needs of sexuality and procreation must be satisfied as much as the need to eat' (ibid 32). In this way Rubin could assert that sexual relations were as materially based as class relations, at the same time locating women's subordination in the development of specific relational forms emerging in response to a reproductive imperative.¹⁹

The idea that women's oppression stemmed from a separate system of subordination – which co-existed with but did not derive from capitalism – crystallised in the notion of 'patriarchy'.²⁰ This 'dual systems' approach was highly resonant of Marxism and drew directly from Marxist concepts and methodology. Christine Delphy, for example, deployed the Marxist concept of class to analyse women's position in terms of men's expropriation of women's domestic labour. She argued that the family formed the site of women's exploitation by men within the context of a domestic mode of production which was analytically distinct from capitalism (Delphy 1984). An important feature of Delphy's analysis was to situate working class men in both the exploited and exploiting class depending on the

¹⁷ Dalla Costa's analysis differed from previous analyses of housework because it posited a *direct* link between women's domestic labour and the production of surplus value. While prior analyses acknowledged a relationship between housework and processes of production, they nevertheless placed it outside the realm of capitalist relations of production (Benston 1969).

¹⁸ 'Sex as we know it – gender identity, sexual desire and fantasy... is itself a social product' (Rubin 1997: 32).

¹⁹ Rubin argued that women's subordination derived from kinship practices which facilitated the exchange of women: 'The exchange of women does not necessarily imply that women are objectified in the modern sense... but it does imply a distinction between gift and giver. If women are the gifts, then it is men who are the exchange partners. And it is the partners, not the presents, upon whom reciprocal exchange confers its quasi-mystical power of social linkage. The relations of such a system are such that women are in no position to realize the benefits of their own circulation' (*ibid*: 37).

²⁰ Understandings of 'patriarchy' vary from text to text but Sylvia Walby catches the general gist of it: 'patriarchy [is] a system of social structures and practices in which men dominate, oppress and exploit women' (1990: 20).

mode of production. By the same token, working class women were revealed to be doubly exploited, by capitalism and patriarchy simultaneously.²¹

Heidi Hartmann, writing in 1981, is perhaps the best-known exponent of a dual systems approach (Hartmann 1997). Hartmann's work focused on elaborating the inter-relations of patriarchy and capitalism within the context of a theoretical tradition which had, for the most part, been blind to them: 'The marriage of Marxism and feminism has been like the marriage of husband and wife depicted at common law: Marxism and feminism are one and that one is Marxism' (ibid.: 97). Like Delphy, she posited patriarchy as a distinct system of social relations with a material base in men's control over women's labour (ibid.: 101). Moreover it was a system which predated capitalism but now worked largely in partnership with it, although - Hartmann made clear - there was nothing inevitable about this partnership and many potential tensions between the two systems. Hartmann grounded her argument in a close study of the development of the family wage which, she contended, emerged as a means of resolving the conflict between capitalist and patriarchal interests in the context of industrialization (ibid.: 104-106). The overall thrust of her approach was to insist on theoretical recognition of and engagement with patriarchy as distinct system of social relations, maintaining that a failure to do so was a failure also to attend to crucial aspects of the operation of capitalism in a patriarchal society.²²

Black feminist analysis

Given the theoretical tradition in which they found themselves, it was crucial for feminists to assert the analytical distinctiveness of gender to prevent its absorption within a framework which privileged class and submerged women's interests in those of men. Dual systems theory was thus an attempt to problematize prevailing understandings of oppression as unidimensional and exclusively class-based. The development of a dual systems approach also facilitated recognition of working class women's 'intersectional' location while, by challenging the primacy of class (and, with it, the capacity of Marxism fully to account for relations of exploitation), it created space for theoretical engagement beyond the class/gender interface.

Thus, for example, Gloria Joseph (1997) responded to Hartmann by indicting both Marxism and feminism for their failure to address race: 'if one cannot claim that Marxism is complete without a consideration of feminism, it is certainly true that neither is complete without a consideration of race issues' (ibid.: 107). Joseph's

²¹ Delphy was criticized by Marxist-feminists for misusing Marxist concepts, e.g., class (Barrett & McIntosh 1979). It was also argued that women's social and economic position varied too much for them to fall within the same (exploited) class. However, this was to misunderstand the notion of class as Delphy – drawing on Marx – applied it, i.e., not as a concept of group identity but rather as a structural *relation* within a particular *system* of production (Delphy 1984: 25-27).

²² Dual systems theory was subject to a sustained critique by Iris Marion Young in 1980 who argued, that it had failed to challenge the primacy of a Marxist model or to deliver a viable structure for the analysis of patriarchy and capitalism as separate systems of oppression. Efforts to do so, she argued had led to the 'ghettoization' of women's oppression within the family and the neglect of gender issues outside that context (1997: 101). Young argued for a unified theory which acknowledged gender 'as a basic axis of social structuration' and placed it at the centre of any analysis of social relations of domination: 'we need not merely a synthesis of feminism with traditional Marxism, but also a thoroughly feminist historical materialism which regards the social relations of a particular historical formation as one system in which gender differentiation is a core attribute' (ibid.: 102). See further below.

intervention demonstrates an understanding of theory as offering – or at least striving to offer – a *complete* account of social relations. At the same time, the nature of her critique was to call into serious question the viability - and desirability – of such an account. Thus, on the one hand, she talks of ‘white supremacy’ in systemic terms, suggesting the need for a ‘tri-systems’ analysis of relations of domination. On the other hand, by so doing, she highlights the enormity and sheer complexity of such a totalising project. In other ways too, Joseph’s critique moves away from strict adherence to materialist theoretical form, most significantly by challenging the centrality of economic exploitation in Marxist and feminist theorizing: ‘the virulent suppression of one race by another does not appear reducible to purely economic considerations’ (ibid.) and by highlighting the obvious difficulties which cross-cutting forms of oppression posed for the emancipatory struggle:

Black women have to be considered one of those groups with special interests. Just as women cannot trust men to “liberate” them, Black women cannot trust white women to “liberate” them during or “after the revolution”... White feminists have to learn to deal adequately with the fact that by virtue of their whiteness, they are oppressors as well as oppressed persons’ (ibid.: 108).

Thus, Joseph’s intervention was representative of a critical move rendering problematic the materialist project of social transformation by raising serious questions of political agency: *who* were the agents of *what* change in a context in which the oppressed were simultaneously oppressors? How could one develop a theory and practice of emancipation in such circumstances?

The eventual conclusion of Young (1997) and other feminist scholars (for example, Eisenstein 1979) was to move towards theoretical and political synthesis, but not one which privileged class over gender or other forms of social domination.²³ In fact, this was early recognised by those whose intersectional position had already alerted them to the inadequacies of a separate systems approach. The Combahee River Collective, for example, called for a political and analytical stance which encompassed feminism, socialism, racism and heterosexism simultaneously:

The most general statement of our politics ... would be that we are actively committed to struggling against racial, sexual, heterosexual and class oppression and see as our particular task the development of an integrated analysis and practice based upon the fact that the major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives’ (Combahee River Collective 1997).

The idea of ‘interlocking’ oppressions was quickly taken up by other Black feminists, most notably, Patricia Hill Collins (1990) who argued against ‘additive approaches to oppression:

²³ Young did commit herself to the development of a ‘truly materialist theory’, which she described as ‘a methodological priority to concrete social institutions and practices, along with the material conditions in which they take place’ (1997: 105). She also argued for the retention of a Marxist focus on ‘the structure of labouring activity and the relations arising from labouring activity... as a crucial determinant of social phenomena’ (ibid.)

Instead of starting with gender and then adding in other variable such as age, sexual orientation, race, social class, and religion, Black feminist thought sees these distinctive systems of oppression as being part of one overarching structure of domination (ibid.: 222).

Hill Collins characterized this structure as a 'matrix of domination' (ibid.: 224). There are various ways in which the idea of a matrix can be understood in this context. One could, for example, draw upon a computing analogy to view it as 'a gridlike array of interconnected circuit elements' (Concise O.E.D. 1991), thus resonating not only with popular associations derived from the film, *The Matrix*, but also with Crenshaw's conjuring of the gridlike image of an intersection to account for black women's position in anti-discrimination law. However, there is another notion of a matrix, etymologically derived from the French *matrice* and the Latin *matrix*, meaning 'womb' (Barnhart: 641) which coheres with Hill Collins' insistence on an understanding of relations of domination in which sex, race, and other 'axes of oppression' work *together* to produce diverse experiences of domination - depending on the social location and particular relational configuration - within a structured *whole*. This is quite incompatible with an analytical focus which views relations of domination engendered by sex, race and class as separate and distinct. The evocation of matrix as womb also gets at another dimension of Collins' analysis, that is, the dynamic and shifting character of relations of domination, the way in which they evolve and develop over time, space and socio-economic location.²⁴ This makes them difficult to *map* in any comprehensive sense but it does invite an analytical approach which places weight on the kind of detailed historical exploration which materialism championed. At the same time, the emphasis on a single 'overarching structure' serves as a constant reminder of the need to relate the local to the global, the part to the whole. Hill Collins was not advocating a retreat from the 'aspiration to totality' (Weeks 1998: 71); rather, she was suggesting how it might be effectively retained, that is, through the reconceptualization of relations of domination in terms of interlocking rather than separate systems of oppression:

Viewing relations of domination ...as being structured via a system of interlocking race, class and gender oppression expands the focus of analysis from merely describing the similarities and differences distinguishing these systems of oppression and focuses greater attention on how they interconnect. *Assuming that each system needs the other in order to function* creates a distinct theoretical stance that stimulates the rethinking of basic social science concepts' (Hill Collins 1990, my emphasis).

An important consequence of Hill Collins' analysis, like Joseph's, is that it enabled a better theoretical understanding of intersectional locations, highlighting, for example, how forms of resistance by white women to white men's domination could simultaneously operate as modes of domination in relation to black women and men.

This posited the possibility of multiple standpoints in the context of political agency but, as Hill Collins went on to elaborate, it also conferred upon Black women the

²⁴ A matrix can also mean 'an environment or substance in which a thing is developed' (Concise O.E.D; 1991).

dubious 'privilege' of occupying a distinct social location of triple oppression in the context of interlocking systems of race, gender and class oppression.

Hill Collins did not contend that Black women's standpoint was epistemologically privileged: 'No one group' she observed 'has a clear angle of vision' (Hill Collins 1990). However, she did emphasize the importance of attending to those standpoints most likely to be suppressed:

A black women's standpoint may provide a preferred stance from which to view the matrix of domination because, in principle, Black feminist thought as specialized thought is less likely than the specialized knowledge produced by dominant groups to deny the connection between ideas and the vested interests of their creators' (Hill Collins 1990).

Although in many ways echoing Marx's account of the distinct vantage point of the working class in the context of capitalism, such an acknowledgement of multiple standpoints inevitably rendered unstable a theoretical commitment to providing a 'total' account of relations of domination. Moreover, by bringing to the fore epistemological questions about how knowledge of oppression was (to be) attained, Hill Collins' analysis cohered with growing attention within feminism and critical race theory to the excavation of forms of subjugated knowledge as well as with the greater general emphasis on questions of subjectivity, identity and experience which emerged in the 1990s and shaped intersectionality theory. In the end and notwithstanding the best efforts of many feminist and critical race scholars to hold on to core aspects of the theoretical tradition from which they came, the difficulties and uncertainties engendered by their own critiques could not, it seemed, co-exist with a continued commitment to the tenets of historical materialism.

CONCLUSION: A TALE OF TWO THEORIES

Just as feminist efforts to address issues of intersectionality in a social theoretical context were contributing to the dissolution of the dominant theoretical tradition, feminist legal scholars were becoming alert to the possibilities of law not just as a tool to pursue reform-oriented political ends but also as a way of thinking about and theorizing gender relations. Carol Smart's *Feminism and the Power of Law* (1989), emphasizing law's role as a hegemonic discourse, was particularly influential here, shifting the focus of legal feminism away from instrumental analyses of law towards an exploration of its constitutive effects on women's apprehension of themselves (Chunn and Lacombe 2000). Similarly, Judith Butler's theory of performativity has played a crucial role in directing feminist analysis toward questions of legal subjectivity (Butler 1990; 1993). It is largely within the context of such engagements with law – as a performative process of subjectivity formation – that 'modern' intersectionality theory has taken shape.

As a result, there are striking differences between the approaches of past and present efforts to theorize intersectionality, particularly with regard to the way in which issues are framed and the kinds of questions generated by theoretical enquiry. One striking contrast is the relative lack of historical attention in contemporary intersectionality analyses, echoing what Lynn Segal suggests has

become a broader tendency in feminist theory (Segal 1999: 14). In addition, modern intersectionality scholarship is much less concerned with tracing the root causes of inequality manifestations. It is a more a discourse of representation than origins, one which sees the possibilities for future transformation in interpretations of the present rather than interrogations of the past.

Current intersectionality theory is also more distanced from collective political activism; certainly the politics of collective action is much less evident in modern analyses. In this sense, materialist feminism (and second-wave feminism in general) was characterized by a very different notion of political agency in which some form of collective organization was viewed as a necessary condition of any strategy of emancipation and individual acts of resistance were recognised as such only in so far as they contributed to the development of a collective consciousness. The perceived enormity of the enterprise, entailing wholesale economic, political and social restructuring, simply did not produce the kind of focus on individual subjectivity which characterizes current analyses.

This theoretical retreat from collective political agency coincides, in radical thinking, with a decline in attention to economic considerations, what is sometimes characterized as the 'cultural turn' in left politics. This shift is clearly detectable in feminist legal theory (Conaghan 2000) and a striking feature of much intersectionality analysis, notwithstanding gestures of acknowledgement in the direction of class inequality. Part of the difficulty here is the absence of an adequate framework for thinking conceptually about the economic. Once the materialist project of economic transformation was abandoned, so also were ways of thinking about economic issues outside a materialist frame. When the importance of attention to distributive considerations reasserted itself in the neo-liberal context of growing socio-economic inequalities worldwide, it was a simple move to annex class to existing conceptions of identity, to locate the economic in the cultural, to adopt a frame in which 'the material' (those 'life processes' to which Marx referred) was repositioned as textual product which could be resisted and reconfigured through discursive contestation.

Kathi Weeks highlights the problem with such a perspective from the point of view of political transformation:

In the absence of some sense of the whole, some conception of the complex social formations that constitute and constrain subjects, we end up with an impoverished model of the subject, that overestimates its capacities for self-creation and self-transformation, as well as a very limited understanding of the forces we must subvert in order to make possible the construction of alternative subjects (1998: 4).

In other words, even within the context of a focus on subjectivity, current feminist theoretical models do not deliver because they fail to produce an effective agent of political change. Indeed, the absence of sustained historical engagement in much contemporary theorizing makes the idea of change conceptually problematic; in a sense, there is only the present to be confronted and only what is before us to map and represent.

What then are the implications of the above analysis for the feminist project in law? I began by asserting that feminist legal engagement is a practical activity designed to engender, directly or indirectly, socially transformative processes and effects. In this, it may be understood as part of broader feminist commitment to 'praxis', that is, to the convergence of theory and practice, a productive coming together of thought and action, ideas and strategies, scholarship and politics. It is, I would contend, against this standard that the value of intersectionality, as a theoretical and strategic approach, should be measured.

Comparing present efforts to unravel issues of intersectionality with those of past theoretical traditions is instructive for a number of reasons: first, it draws to our attention the extent to which our conceptual tools are the product of broader frameworks of thinking which, at any given time, may be beyond the scope of critical scrutiny precisely because they *are* frames *within which* theoretical engagement is taking place. A second virtue of such a comparative approach is that it introduces a necessary historical dimension by which such an insight may be gleaned. Revisiting the past allows us to draw connections between our current theoretical agendas and broader intellectual and political developments. Not only does it facilitate Weeks' practices of 'relating and connecting' (1998: 5), in a very real sense, it compels them.

Finally, the act of comparison serves as a means of highlighting particular limitations in intersectionality analysis. Chief among them is the preoccupation with law's representational role. It is not difficult to understand why feminist scholars should seek to 'map the margins' of inequality (Crenshaw 1991) or to address its failure, substantively and strategically, to recognise and represent experience at the intersection. However, it must be remembered that a map is merely a surface representation; topographical techniques notwithstanding, it cannot adequately denote either depth or dimension. Nor can it capture or evoke movement or change through time. Moreover, it is always to scale, depicting proportion not size and producing spatial representations whose correspondence with the real is partial and sometimes misleading.

If we are truly to get to grips with the issues intersectionality raises, we need a theoretical framework which is genuinely *multidimensional*, possessing breadth, depth and, most importantly, mobility. We must not allow our conception of the problems – and solutions – to become caught within a narrow legal aesthetic. Moreover, if we are serious about equality, we cannot continue to sidestep economic issues. The theoretical framework we adopt must not only confront and accommodate problems of distribution; it must acknowledge their centrality in any equality-seeking project. This must entail more than simply tracking and addressing 'random' disparities.²⁵ Intersectionality can chart and map a range of disparities with relative ease. It can generate a rich stock of data, for example, about how categories of women are differently situated in relation to education, the family, the labour market, and the political system. However, intersectionality is less able to capture the processes through which these disparities are produced or the relations of subordination of which they are expressive. We need to look at ways in which we can theorize these relations and processes. We need a

²⁵ This is the kind of approach which underpins, for example, the recent Equalities Review (2007).

language to 'relate and connect' diverse experiences of inequality with the structures, processes, practices and institutions in which they occur. And we need to consider the role and potential of law in this context.

This is not to insist that we return wholesale to the tenets of historical materialism or that we take up the project of systems-synthesis urged by Young, Hill Collins and others. However, it is to suggest that we turn again to some aspects of that earlier engagement, in particular, that we take seriously the idea 'that what we do can have consequences for who we are and how we think' (Weeks 1998: 5) and that we attend more closely to what we do, e.g., labouring activities, and the regulatory regimes in which we do them.

The notion of a regime is a useful one, eliciting a softer, less determinative image of ordering processes than is implied by the idea of a system. Regimes can be navigated, negotiated, resisted, undermined and overcome, yet still remain meaningfully operative. They are not dependent, as Duncan Kennedy observes, on any structural coherence or system logic (1993: ix). Regimes engender tendencies but they may also meet with counter-tendencies. They may be more or less stable, more or less controlling but they do not rely on an understanding of their operation which requires them to be determinative or overriding. Duncan Kennedy characterizes patriarchy as a regime. In fact he describes 'social life in the West today' as '... in a rough way a capitalist, patriarchal, white supremacist "regime"' (ibid.). (One might add heteronormative but the approach remains a compelling one). Another scholar making use of the notion of a regime is Joan Acker (2006) who invokes the idea of 'inequality regimes' to conceptualize issues of intersectionality. She describes inequality regimes as 'loosely interrelated practices, processes, actions and meanings that result in and maintain class, gender and racial inequalities within particular organizations' (ibid.: 443).²⁶

Inequality regimes may vary in terms of the type and degree of inequality they produce, the organizing processes producing inequality and the opportunities for resistance. However, what is important is that they operate within and across organizations: any organizational form is likely to generate an inequality regime which will operate on top of and against the background of existing regimes. This makes the business of mapping inequalities, whether at the intersections or otherwise, more or less impossible: regimes are always acting upon and intersecting with other regimes so that the inequalities they yield, while the product of ordering processes, are nevertheless fluid and to a degree unpredictable. To put it another way, *all* inequalities are intersectional; moreover they must be understood in relation to dynamic processes of social ordering, both at the 'local' and the 'global' level. Such an approach requires retention of a focus on the specificity of inequality experiences but within a framework which endeavours to relate and connect those experiences to multiply interlocking ordering processes.

This should not imply the abandonment of categories of race, gender, sexuality or class in favour of the complex elaboration of inequality subgroups. On the contrary, such categories are meaningful because they signal forms of ordering commonly

²⁶ Inequalities here are understood in terms of 'systematic disparities between participants' whether in relation to access to power, resources, opportunities pleasures and other rewards (ibid.)

found within and across organizations.²⁷ The point is that they don't operate in isolation from each other and that makes the business of challenging their operation all the more complicated.

The role of law in this equality-seeking process should be to facilitate egalitarian change in inequality regimes. This may or may not require anti-discrimination law as we currently understand it; and it may or may not be aided by the development of a constitutional equality guarantee. However, what is clear is that law's equality-seeking strategies should flow directly from an analysis of the (inter)operation of inequality regimes, including but not restricted to the ordering effects of law itself. This is not incompatible with much of what currently passes as intersectionality analysis in a legal context but it does help to identify its limitations. Law cannot be the starting point of inequality analysis and we should resist the lure of its particular aesthetic in our engagements with it.

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²⁷ What Davina Cooper has described as 'ordering principles' (2004: 51)

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