

# A critical history of the rise and appropriation of intersectionality

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## Abstract

It has been three decades since Kimberlé Crenshaw first named intersectionality and brought it onto the legal stage. Since then, the idea has experienced rapid growth in popularity. While Crenshaw's original use of the term solely sought to introduce intersectionality as an analytical framework for the law to address the concerns of multiply oppressed individuals better, the concept has dramatically evolved in legal, academic, and socio-political discourses. From the UN acknowledging the need to examine the intersection of multiple forms of discrimination to hundreds of thousands of young people dedicating social media posts to intersectional social justice, it seems intersectionality is on everyone's lips. Nevertheless, it has never been harder to answer the simple question: "what is intersectionality?" Although intersectionality's rise in momentum has done wonders for its visibility, it has not come without a cost. The price to pay for its expansion was the convolution of its nature, methodology, and intent, as well as the shedding of many crucial aspects of its original identity. In an ironic twist of fate, as intersectionality has grown in popularity, it has begun to exclude the very people it was created by and for, as well as subsumed by dominant bodies it critiqued.

Rather than centring around those most oppressed in society, the subaltern, intersectionality has become increasingly institutionalized, filtered, and opportunistically used to further various political agendas with no ties to the Combahee River Collective's liberatory aspirations. This thesis argues that intersectionality's rise in popularity and its concomitant appropriation into what I call "intersectionality-lite" is cause for concern. It begins by critically recounting the first emanations of intersectional-like thought in the 19th century up to their formal articulation in the Combahee River Collective Statement in 1977. Examining the often-ignored dimensions of some key moments and individuals that lead to the emergence of intersectionality will allow

readers to understand more clearly and holistically what has become an excessively nebulous concept. Having gained a better understanding of intersectionality's *raison-d'être* through exploring its roots in resistant knowledge, we will consider what motivated Crenshaw's introduction of intersectionality on the legal scene. A critical evaluation of its value as a legal tool will follow, as well as an exploration of why intersectionality joining the legal arsenal is bound to limit severely, if not corrupt, what once was a radical, revolutionary analytical framework for liberation. Intersectionality, as initially conceptualized and in its truest form, holds more potential when pointed at the law rather than when shoehorned into it. Finally, we will study how academic and broader socio-political discourses remodelled intersectionality into a more palatable version where it does not challenge the present status quo benefiting dominant groups but instead serves it. Characterized by its weakening ties to social justice, its gradual exclusion of the subaltern from intersectional theorizing, and the renouncement of its unique methodology, intersectionality-lite is the unrecognizable dark reflection of what once was intersectionality. With the days of the Combahee River Collective's radical hope of Black, feminist, queer, and anti-capitalist revolution long gone, we must be wary of the appropriation of intersectionality into a shadow. This thesis concludes that while currently at risk, through restructuring, refashioning, and returning to its epistemic roots, intersectionality may still hold potential for the radical reimagination of society as well as the challenging of oppressive interlocking structures of power.

## French Abstract

Depuis maintenant 3 décennies que Kimberlé Crenshaw a mentionné pour la première fois l'intersectionnalité et l'a mise en exergue sur l'autel de la loi. L'idée a grandi dans les esprits et a vu sa popularité croître rapidement. Cependant, tandis que l'usage originel du terme émis par Crenshaw avait pour but d'introduire l'intersectionnalité en tant que base analytique en vue d'ériger un plan perspectif légal permettant d'améliorer la réponse à apporter aux préoccupations des multiples populations sujettes à diverses formes d'oppressions, le concept a malheureusement dérivé en conjectures juridiques, académiques et socio-politiques. Avec une ONU admettant la nécessité d'examiner l'intersection de multiples formes de discriminations, ainsi que des centaines de milliers de jeunes communiquant sur les réseaux sociaux au travers de messages inhérents à la justice sociale intersectionnelle ; il apparaît que le sujet de l'intersectionnalité habite dorénavant toutes les lèvres. Et pourtant, il n'a jamais été aussi difficile d'apporter une réponse à la question : « qu'est-ce que l'intersectionnalité ? »

En dépit du fait que la montée en puissance de l'intersectionnalité dans le débat public ait accru sa visibilité, ce ne fut pas sans contrepartie. Le prix à en payer fut le dévoiement de son interprétation, de sa méthodologie, de son but, ainsi que de nombreuses facettes de ses fondements originels. Avec l'élargissement de son rayonnement, l'intersectionnalité a commencé à exclure les personnes mêmes par lesquelles et pour lesquelles elle était apparue ; elle fut subsumée, diluée en généralité par les corps dominants contre lesquels elle se dressait. La montée en popularité de l'intersectionnalité et son appropriation concomitante dans ce que j'appelle « l'intersectionnalité-lite » est préoccupante. Cette thèse commence par raconter de manière critique les premières émanations de la pensée intersectionnelle au 19<sup>e</sup> siècle jusqu'à leur articulation formelle au travers du Combahee River Statement en 1977. Le fait de se

pencher plus précisément sur les dimensions souvent ignorées, mises en exergue par certains individus et moments « clés », ayant permis l'émergence de l'intersectionnalité, offrira aux lecteurs la possibilité de comprendre plus clairement ce qui est de nos jours devenu un concept nébuleux. Ayant acquis une meilleure compréhension de la raison d'être de l'intersectionnalité en explorant ses racines et fondements, nous examinerons ce qui a motivé l'introduction par Crenshaw de l'intersectionnalité sur le théâtre de la loi. Une évaluation critique de sa valeur, en termes d'outil juridique, suivra ainsi qu'une introspection des raisons pour lesquelles l'adjonction de l'intersectionnalité à l'arsenal juridique est vouée à restreindre sévèrement voire corrompre ce qui jadis était constitutif d'une approche analytique radicale, au but libérateur. Enfin, nous étudierons comment les discours académiques et socio-politiques plus larges ont remodelé l'intersectionnalité en une version plus didactique ne remettant pas en cause le *status quo* actuel, et au contraire, en le renforçant. Caractérisée par l'affaiblissement de ses liens vers une justice sociale, par son exclusion progressive du subalterne de la théorisation intersectionnelle et par le renoncement à sa méthodologie unique, « l'intersectionnalité-lite » ne constitue plus que le sombre et méconnaissable reflet de ce qui fut jadis l'intersectionnalité. L'époque du collectif Combahee River, véritable espoir radical de révolution « black », féministe, queer, et anticapitaliste, étant maintenant révolue ; nous devons prendre garde de l'entrée en pénombre de ce que fut l'intersectionnalité. A travers la restructuration, la refonte de son image et le retour à ses racines épistémiques, l'intersectionnalité dispose toujours d'un potentiel pouvant permettre une redéfinition radicale de la société et des structures de pouvoir oppressives et imbriquées qui y règnent.

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## Introduction

On the early morning of June 2<sup>nd</sup>, 1863, escaped slave Harriet Tubman led an expedition of 150 African American soldiers along the South Carolina Lowcountry Combahee River, which would lead to the rescue of a great number of ex-slaves. Liberated five months prior by the Emancipation Proclamation,<sup>1</sup> the resisting Confederate Army refused to release its captives, transporting them on the Combahee Ferry to join enslaved farmworkers. Although the original aims of the raid were to remove torpedoes from the river and to destroy local slave plantations, Tubman quickly transformed the operation into a liberatory one. Assisted by Colonel James Montgomery, Tubman weakened Confederate troops to the point of retreat. Upon the Confederacy's withdrawal, the Union Army transported local enslaved farmworkers and passengers of the ferry to safety over the course of two days. Thanks to Tubman's strong leadership and determination, the Combahee ferry raid allowed for the liberation of over 750 people.

Over a hundred years later, Tubman's radical political act for liberation would continue to motivate those seeking to stand up to the oppressive *status quo*. Amongst those inspired by the ex-slave's actions was an activist group of Black lesbian feminists seeking to develop a political agenda challenging "racial, sexual, heterosexual, and class oppression."<sup>2</sup> Naming themselves "The Combahee River Collective" (CRC) after the historic raid, the group aimed to make their commitment to the liberation of those most oppressed immediately apparent to anyone who would hear their name. To this day, the name Combahee River Collective is a reminder that intersectional theorizing must draw from and inform emancipatory praxis to be

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<sup>1</sup> President Abraham Lincoln, *The Emancipation Proclamation* (Bedford, Massachusetts: Applewood Books, 1998)

<sup>2</sup> Akasha (Gloria T.) Hull, Patricia Bell Scott, and Barbara Smith (eds.), *All the Women are White, All the Blacks are Men, but Some of Us are Brave*, 2<sup>nd</sup> ed. (New York: Feminist Press, 2015) at 13



faithful to its original aim.<sup>3</sup> The first to use the terminology of interlocking systems of oppression to describe the subjugation of Black women, the Collective and its *Combahee River Collective Statement*<sup>4</sup> (CRCS) played a crucial role in developing the concept of intersectionality.

With the days of the CRC behind us, intersectionality is now in crisis. Despite being declared the “most important contribution that women’s studies have made so far,”<sup>5</sup> there exists a considerable amount of confusion regarding intersectionality’s exact definition, application, and purpose. This all-encompassing confusion is curious considering the existence of the CRCS, which clearly stipulates the motivations, methodology, and philosophy of what Kimberlé Crenshaw would later title “intersectionality”. While there exists a general understanding that intersectionality references “the critical insight that race, class, gender, sexuality, ethnicity, nation, ability, and age operate not as unitary, mutually exclusive entities, but as reciprocally constructing phenomena that in turn shape complex social inequalities,”<sup>6</sup> the specifics of its analytical ramification, practical aim, and operation have become increasingly ambiguous. It appears that intersectionality’s rise in popularity since the publication of Crenshaw’s 1989 article “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”<sup>7</sup> coincides with the growing ambiguity surrounding it, and, arguably, its co-option. With Crenshaw herself confessing her bewilderment at “how it gets- used and underused;

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<sup>3</sup> Taylor Keeanga-Yamahtta (ed.), *How we get free: black feminism and the Combahee River Collective* (Chicago: Haymarket Books, 2017) at 23

<sup>4</sup> Akasha (Gloria T.) Hull, Patricia Bell Scott, and Barbara Smith (eds.), *supra* note 2 at 13-22

<sup>5</sup> Leslie McCall, “The Complexity of Intersectionality” (2005) 30:3 *The University of Chicago Press* at 1771

<sup>6</sup> Patricia Hill Collins “Intersectionality’s Definitional Dilemmas” (2015) 41:1 *Annual review of Sociology* at 2

<sup>7</sup> Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.” (1989) 139 *University of Chicago Legal Forum*

sometimes I can't even recognize it in literature anymore,"<sup>8</sup> intersectionality is at risk of losing its meaning.

This thesis will argue that intersectionality is in the process of being corrupted and its terminology appropriated to further political goals contrary to its original aspirations. We must re-establish intersectionality's true meaning and return to its roots if the CRC's "very definite revolutionary task"<sup>9</sup> is ever to be completed. The critical examination of intersectionality and acknowledgement of its appropriation is necessary to avoid it becoming part of "an arsenal of projects whose progressive and radical potential waned."<sup>10</sup> Only once we better understand intersectionality's *raison-d'être*, as well as the mechanisms and motives behind its corruption, can we begin to solve this crisis.

Our analysis of intersectionality will center around the CRC's articulation of intersectional ideas and the political movement that ensued. To facilitate this discussion, we will refer to the intersectional project's different focal points using Patricia Hill Collins' dissection of the concept.<sup>11</sup> The foundational intersectional scholar distinguishes between three co-constitutive characterizing dimensions of intersectionality: The first dimension refers to intersectionality as a field of study, where the concept of intersectionality itself is the object of scrutiny. The second dimension of the project Collins identifies is intersectionality as an analytical strategy. This appertains to ventures relying on intersectional frameworks "to create novel ideas about the social world. These projects rely on an intersectional lens to see modern issues through a new

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<sup>8</sup> Kathleen Guidroz and Michele T. Berger "A Conversation with Founding Scholars of Intersectionality Kimberlé Crenshaw, Nira Yuval-Davis, and Michelle Fine," in Kathleen Guidroz and Michele T. Berger (eds.), *The Intersectional Approach: Transforming the Academy through Race, Class, and Gender* (Durham: University of North Carolina Press, 2010) at 65

<sup>9</sup> Barbara Smith (ed.), *Homegirls: a Black feminist anthology* (New Brunswick: Rutgers University, 1983) at 281

<sup>10</sup> Patricia Hill Collins, *Intersectionality: as Critical Social Theory* (London: Duke University Press, 2019) at 3

<sup>11</sup> Collins, *supra* note 6 at 2

critical perspective and thus potentially finding new possible solutions to different forms of oppression.”<sup>12</sup> Finally, Collins identifies the last facet to be intersectionality as a critical praxis. Decreasingly recognized, this dimension “denotes intersectionality’s ties with social justice and the ways in which the former two categories may inform political action.”<sup>13</sup> It is the collective operation of each of these focal points which compose intersectionality. The current tendency of the legal system to isolate these tenets, at times opportunistically, may be contributing to its denaturing. Our analysis will be concentrated on to the US and Europe as the CRC and Crenshaw's conceptualization of intersectionality were informed by US Black feminism critiquing largely Euro-American axioms of power.

Our exploration of intersectionality’s rise and appropriation will be structured in the following way: We will begin with a genealogy of intersectional thought, starting from its emergence in the 19<sup>th</sup> century to its synthesis, development, and coherent articulation in the CRCS in 1977. This critical retelling of intersectionality’s history will aim to highlight the increasingly forgotten critical traditions and resistant knowledge underlying its development. Through the exploring and dissecting of some of critical “situated nodal points,”<sup>14</sup> we will be reminded of intersectionality’s true methodology, aims, and general *raison-d’être*. By the end of Chapter 1, the reader will hopefully have some clarity as to what intersectionality is. This insight will also serve a reference when tracing intersectionality’s co-option.

Beginning with an analysis of Crenshaw’s motivations for introducing the concept of intersectionality into the legal world, Chapter 2 will study intersectionality’s relationship with the law since 1989. Upon exploring the limitations of the single-axis approach dominating the

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<sup>12</sup> Collins, *supra* note at 2

<sup>13</sup> *Ibid*

<sup>14</sup> Nina Lykke, *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing* (New York: Routledge, 2011) at 49

field of anti-discrimination law globally, we will study the successes, failures, and eventual plateauing of legal intersectionality. As we analyze intersectional thought's encounter with the law, we will observe that their combination requires intersectionality to transform profoundly. From has emerged a new kind of intersectionality, one which is referred to herein as intersectionality-lite, characterized by its loss of many defining intersectional traits. This diminished form sacrifices intersectionality's revolutionary elements and ties to social justice, thus being less threatening to dominant power structures. While transforming the field of anti-discrimination law *via* intersectionality would correct some of the legal system's shortcomings, it would fail to address the deeper systemic change which desperately needs to occur.

Chapter 3 will examine the cost of intersectionality's increased popularity, notably how academia and general socio-political discourse's appropriation of intersectionality have led to the development of its dark double. We will see that academic bodies are centers of power, and their newfound control over intersectionality's narrative is cause for concern. We will begin by studying how academic bodies delegitimize intersectional thought, principally by citing it in a myriad of contradicting ways, dismissing its bottom-up, subaltern-centric, collaborative methodology, and cutting its ties to praxis. Drawing on the work of Masha Gessen,<sup>15</sup> we will analyze how this strategic process of misrepresentation and deformation aims to render harmless a concept which threatens dominant regimes. This will be followed by an analysis of the appropriation of intersectionality by academia and dominant socio-political institutions controlling the realm of knowledge. Academic institutions' inherent colonial, capitalistic, and patriarchal nature suggests they may appropriate intersectionality-lite and opportunistically draw on its symbolic power. By gradually excluding the subaltern from intersectional theorizing and regaining control over how they are represented, dominant axes of power can

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<sup>15</sup> Masha Gessen, *Surviving Autocracy* (New York: Riverbed, 2000)

further reinforce their dominant status over them. Intersectionality could then be used to advance capitalist agendas. Almost entirely severed from its *raison-d'être* and absorbed by the legal, political, and academic structures it sought to dismantle, intersectionality has become unrecognizable. We will conclude by discussing that while we must be wary of intersectionality-lite, there is still hope for the intersectional project.

## Literature review

Intersectionality seeks to analyze and remedy social injustices based on the assumption that major systems of oppression such as sexism, racism, heteronormativity, classism, and ableism are interlocked and co-constitutive of one another. Although epistemic traces of intersectionality emerged as early as in the 19<sup>th</sup> century, the concept was first articulated into an analytical framework by the Combahee River Collective. As a Black feminist lesbian collective, the organization's members sought to articulate their unique struggles, which had remained unacknowledged by social justice movements and wider society. By seeking to authenticate Black non-heterosexual women's experiences of oppression and highlighting that dominant feminist discourse excluded Black women, the Collective created an entirely new lens to apprehend and potentially remedy social oppression. Brought into the legal field by Crenshaw in 1989, the CRC's set of ideas developed into a highly dynamic field and was gradually introduced to the legal arsenal. Crenshaw began a new era for intersectional scholarship and practice, hoping that "the critical insight that race, class, gender, sexuality, ethnicity, nation, ability, and age operate not as unitary, mutually exclusive entities, but as reciprocally constructing phenomena that in turn shape complex social inequalities"<sup>16</sup> would improve the legal system's tackling of discrimination cases to meet better the needs of individuals members of multiple marginalized communities.

Having to shed some of its defining characteristics, arguably abandoning its original revolutionary aim, intersectionality's introduction into the legal arsenal and growth in popularity lead to its drastic transformation. We must ask ourselves if the integration of intersectionality into the legal system is enough to lead to substantive changes or if it limits

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<sup>16</sup> Collins, *supra* note 6 at 2

intersectionality's potential. We must be wary of a new kind of intersectionality that has emerged, as intersectionality's launch into the legal world has been accompanied by the wide co-option of the term and field. Intersectional scholarship has become increasingly esoteric, convoluted, along with decreasingly diverse, and intersectionality is often appropriated in broader socio-political discourse to mean a myriad of different, often conflicting things. With the original aims and meaning of intersectionality ignored, its scholarship growing ever more perplexing and exclusionary, as well as its appropriation in socio-political discourse, it appears intersectionality is in crisis.

We will begin by tracing the history of intersectionality to better determine its *raison-d'être*, and how it was introduced to the legal sphere. Highlighting some of the contradictions inherent to the integration of intersectionality in the law, we will investigate whether the inclusion of intersectional tenets into law may also be an obstacle for deep, long-term progress. Finally, we will study intersectionality's demeaning in academia as well as the ways in which it has been appropriated and co-opted.

#### I- Critically examining intersectionality's history

To better determine intersectionality's *raison d'être*, we will draw from critical theory and trace the idea's origins in the 19th century. This approach is appropriate as some of the CRC's epistemic roots tie it to the Frankfurt school of philosophy and critical theory. The German sociological and philosophical movement claimed that only radical theoretical changes coupled with drastic shifts in practice could tackle the ills of modern society. Much like the CRC after them, they argued that as theories are the products of social processes, one cannot simply accept them as facts but must trace their origins and carefully examine them. Critical theorists opposed

empiricist and positivist tendencies to accept the history of theories without skepticism, thus indirectly endorsing them. Robert-W Gordon would echo this sentiment *vis-a-vis* dominant legal narratives in “Critical Legal Histories.”<sup>17</sup> In the influential piece, the legal historian recontextualizes leading legal narratives as social constructs created to legitimize dominant societal structures. Criticizing legal functionalism, Gordon draws attention to the fact that many legal narratives depict law and other manifestations of the state’s apparatus as “natural” and inevitable. The author urges readers to examine the familiar, deeply entrenched legal storylines they have interiorized and question how they have shaped their reality. Like the CRC, Gordon brings into the light “outsider” legal narratives claiming to varying degrees that law is a legitimating ideology which allows the oppression of minorities and the working class for the benefit of the elite. This methodology, combined with skepticism of teleological narratives around the law, seemed particularly fitting for the critical investigation of legal intersectionality’s emergence.

It is worth noting that Ange-Marie Hancock’s *Intersectionality: An Intellectual History*,<sup>18</sup> where she engages in a historical, geographical, and cross-disciplinary tracing of intersectionality to determine its stewardship, has also heavily inspired this epistemic genealogy. Adopting a multidisciplinary approach, Hancock investigates the philosophical foundations of intersectionality as a concept, tracing the early instances of “intersectional-like”<sup>19</sup> thought multiculturally. Her epistemic history leads her to identify intersectionality’s two major intellectual projects: the “visibility project,”<sup>20</sup> where intersectional scholar-activists aim to bring attention to the lived experiences of marginalized people, and the attempted shift beyond a margin-to-center approach. As we explore intersectionality’s growth and eventual

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<sup>17</sup> Robert W. Gordon, “Critical Legal Histories” (1984) 36:1/2 *Critical Legal Studies Symposium*

<sup>18</sup> Ange-Marie Hancock, *Intersectionality: an intellectual history* (New York: Oxford University Press, 2016)

<sup>19</sup> *Ibid* at 70

<sup>20</sup> *Ibid* at 12



appropriation, we will see that this visibility project has been a success in some regards, although at the cost of intersectionality's practical project as well as its second intellectual goal. Although a helpful lens through which to study intersectionality, one could argue that Hancock's identification does not do justice to intersectionality's larger goal. As we will see, intersectionality, as conceptualized by the CRC in the CRCS, primarily aimed to formulate a liberatory agenda for Black women. While shedding light on the often-ignored reality of their lives was a goal for the CRC and their intellectual predecessors, it was also a step toward reaching their broader emancipatory goal. Stating that raising awareness of Black women's conditions is one of two principal intellectual aims perhaps does not capture the depth of the intersectional project's purpose.

Still, Hancock's work brings much-needed clarity to the muddled discourse that has become intersectional scholarship, as this thesis also aims to do. Stylistic, structural, and differences in aim make this intellectual history distinct from the one in *Intersectionality: An Intellectual History*. Hancock's piece adopts an intellectual property approach; we will favour one similar to Gordon's description in his "Critical Legal Histories."<sup>21</sup> Furthermore, the works differ in purpose: this thesis is concerned with clarifying what intersectionality is to better identify and challenge its corruption in modern discourse, whereas Hancock discusses determining whether intersectionality can be the intellectual property of a distinct demographic. Our selection of different nodal points in intersectional history further reflects varying objectives. Additionally, this attempted partial epistemic history has strong influences from subaltern studies and seeks to analyze the events recounted by centring them around the subaltern. Finally, a significant portion of the analysis herein dedicated to intersectionality's legal dimensions, whilst Hancock does not touch upon intersectionality's legal facet.

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<sup>21</sup> Gordon, *supra* note 17

## II- The emergence of legal intersectionality

Upon its release in 1977, The Combahee River Collective Statement forever changed conceptualizations of oppression. The Statement was also the first work of its kind to explicitly recognize and analyze social injustices based on the assumption that domination systems interlocked. As they wrote the closest piece of work one might liken to an intersectional manifesto, the CRCS's authors, Barbara Smith, Chirlane McCray, Beverly Smith, Cheryl Clarke, Demita Frazier, Akasha Hull, Margo Okazawa-Rey, and Audre Lorde, planted the seeds for what would later become a dynamic field of scholarship. Made possible by the publication of Kimberlé Crenshaw's 1989 article "Demarginalizing the Intersection of Race and Sex,"<sup>22</sup> intersectionality experienced momentous expansion as it was brought onto the legal stage. Drawing on CRT's tenets, Crenshaw demonstrated *via* her analysis of the American cases *DeGraffenreid v. General Motors*,<sup>23</sup> *Moore v. Hughes Helicopters*,<sup>24</sup> and *Payne v. Travenol Labs., Inc.*<sup>25</sup> the shortcomings of the dominant single-axis approach to identity in discrimination cases. Her thought-provoking article urged the legal system to complicate and modernize its understanding of identity and oppression. The lawyer and activist argued that specific forms of discrimination are not merely cumulative but components of a larger system of domination. Having identified that the legal system offered no appropriate remedy for Black women experiencing unique and layered forms of discrimination, Crenshaw argued to integrate an intersectional framework in the law. A critical race theorist herself, she posited the introduction of intersectionality to law as a way of "creat[ing] conditions for the maintenance

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<sup>22</sup> Crenshaw, *supra* note 7

<sup>23</sup> *DeGraffenreid v. General Motors* 413 F Supp 142 (1976) (United States District Court, Eastern District of Missouri)

<sup>24</sup> *Moore v. Hughes Helicopters Inc.* 708 F (2d) 475 (1983) (United States Court of Appeal, 9<sup>th</sup> Circuit)

<sup>25</sup> *Payne v. Travenol Labs., Inc.* 673 F (2d) 798 (1982) (United States Court of Appeal, 5<sup>th</sup> Circuit)

of a distinct political thought that is informed by the actual conditions of black people.”<sup>26</sup> Whilst her proposal for recognizing multi-dimensional discrimination was an essential first step to correcting social injustices, it is perhaps not enough. By limiting intersectionality to small-scale issues, we may rob it of its larger remodelling potential. Fellow CRT theorist Linda Greene voices this concern, stating that while probing the existing oppressive legal system from within may be the only current possibility to further racial justice, “[i]n the long run, [...] it may be necessary to ask whether the confinement of the movement for racial equality to [...] litigation exposes the movement to great risk.”<sup>27</sup> This worry as to the confinement of social justice movements to legality ties to another potential critique of Crenshaw’s article. Indeed, solely focusing on intersectionality as an analytical tool, the piece makes little mention of the concept’s ties to critical praxis. As chapter 1 of this thesis will demonstrate, intersectionality, as conceptualized by the CRC, had a revolutionary aim, and sought to deconstruct patriarchal, capitalistic, colonial and heterosexist societal structures, one of which includes law. Indeed, intersectional-like thought aimed partly to deconstruct legal institutions and rethink social organization entirely. To fit cohesively into the legal arsenal, intersectionality must transform.

As Nancy Ehrenreich argues in her 2002 article “Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems,”<sup>28</sup> integrating intersectional ideas into legal frameworks may be practically difficult to achieve. She identifies three problems: firstly, she highlights that different oppressed groups will have different conflicts and that it is impossible for the law to be consistent whilst furthering the interests of all groups.

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<sup>26</sup> Kimberlé Crenshaw, “Critical Race Theory and Critical Legal Studies” in Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (eds.) *Critical race Theory: The Key Writings That Formed the Movement* (New York: New Press, 1996) at 119

<sup>27</sup> Linda Greene “Race in the Twenty-First Century: Equality Through Law?” in Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (eds.) *Critical race Theory: The Key Writings That Formed the Movement* (New York: New Press, 1996) at 300

<sup>28</sup> Nancy Ehrenreich, “Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems” (2002-2003) 71 *University of Missouri-Kansas City Law Review*

Secondly, there is potential for oppressed groups to always divide into narrower sub-groups, thus sacrificing coherence. Indeed, whilst the law's generalizing tendencies often disadvantage minorities, specificity can be an obstacle to practicality and efficiency. Finally, she underlines that, at times, various needs will have to be hierarchized, with the law having to decide which group or sub-groups needs are to be prioritized. This may potentially lead to conflicts and create further division. While the hierarchizing of needs goes against the intersectional ethos, the practical reality is that it is highly likely some groups' needs will directly contradict each other. Intersectionality does not easily lend itself to the practicalities required of the law. Whilst the former is a theoretical, methodological endeavor; the latter must apply to material life and order society.

Thirty years after the publication of Crenshaw's article, Shreya Atrey critically examines the courts and legislature's narrow understanding of intersectionality in her 2019 book *Intersectional Discrimination*.<sup>29</sup> After an overview of the different approaches worldwide to legal intersectionality, she underlines a tendency to relegate intersectionality to a sub-category of discrimination law. Despite having entered the legal world three decades prior, intersectional frameworks remain seldom used in practice, with courts worldwide seeming somewhat reluctant to deploy them. Analogously to Crenshaw and the CRC, she argues that the judiciary and legislature must question and investigate what multi-dimensional discrimination claims uncover about societal power dynamics, structures of inequality, and the law's role in sustaining outdated social hierarchies. Atrey proposes deep reforms of the legal system and discrimination law, going beyond acknowledging overlapping identities and allowing for structural changes. Admitting that the current shoehorning of intersectional tenets into law's

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<sup>29</sup> Shreya Atrey, *Intersectional Discrimination* (New York: Oxford University Press, 2019)

rigid pre-existing frameworks is bound to know little success, she suggests reimagining discrimination law itself around intersectionality.

Whilst Crenshaw and Atrey's work makes a compelling case for legal intersectionality and its crucial role in challenging structural inequalities and prevailing unjust social hierarchies, some issues arise. By joining legal institutions, intersectionality has had to undergo a filtering process and lost its revolutionary essence. For justice to be possible, we must entirely rethink the fabric of the legal system. The current integration of intersectionality in law is very superficial, and a more profound inclusion would fail to adequately change Western law's shape, methodology, and philosophy. We must consider the possibility that our current understanding of the law will never be a suitable means to reach an intersectional end. Intersectionality must not simply be an afterthought of the legal system but one of its pillars. Indeed, both lawyers presuppose that the law is the solution to correct injustice. The authors seem to believe that the flawed legal system and methodology can be perfected, notably by including intersectional ideas. The premise that injustice is an unwanted side-effect of law that can be corrected, rather than the fruit of its correct operation, directly contradicts the CRC's beliefs, and may be generally unwise to accept without skepticism.

This alludes to the idea that intersectionality's history since 1989 has not been one of progress but gradual corruption. Perhaps rethinking the fabric of the legal system is necessary for substantial change to be possible. From outside the law, intersectionality may assist in this reimagining, but within it, it is stifled. Currently, intersectionality's integration with the law remains superficial, and an even more profound inclusion would fail to adequately change Western law's shape, methodology, and philosophy. We must consider the possibility that our current understanding of the law will never be a suitable means to reach an intersectional end.

Intersectionality must not simply be an afterthought of the legal system but one of its pillars. In the words of Audre Lorde herself, “The master’s tools will never dismantle the master’s house.”<sup>30</sup> Arguably, the means put forward by Atrey and Crenshaw may never lead to the radical progress that the Collective desired.

### III- Intersectionality-lite: The intersectional project’s lost hope

As will be established in chapter 1, a central dimension of the intersectional project is the creation of a space where those most marginalized in society may have a voice and construct an agenda for their emancipation. To do so, the CRC and its epistemically ancestors centered their analysis around their own experiences as most oppressed members of society. These individuals, characterized by their extreme poverty and marginalization, are what Indian American feminist Gayatri Chakravorty Spivak refers to as the subaltern.<sup>31</sup> Her 1988 postcolonial studies essay “Can the subaltern speak?”<sup>32</sup> explores the absence of a platform for the subaltern to express their concerns. With no way to affect policy debates or demand a fairer share of society’s goods, the subaltern is prevented from ever rising above their low status. To illustrate how elites control narratives surrounding the subaltern, Spivak uses the example of the Indian widow-burning ritual of *sati* and its criminalization under British rule. She decorticates the narrative created by the British of “white men [saving] brown women from brown men” whilst ignoring the true desires of these women.<sup>33</sup> Through this statement and others like it, the British created a truth of Indian barbarity, contrasting it with British civilization. Their control over knowledge production and history allowed for those with

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<sup>30</sup> Audre Lorde, *Your Silence Will Not Protect You* (London: Silver Press, 2020) at 91

<sup>31</sup> Rosalind C. Morris (ed), Gayatri Chakravorty Spivak, *Can the subaltern speak? : reflections on the history of an idea* (New York: Columbia University Press, 2010)

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid* at 50

political power to create narratives which would justify their rule and dominance. Spivak's critique of ethnocentric Western knowledge production illustrates that those who do not possess power, the subaltern, do not control their identity but have it written for them.

Challenging the elites' authority over knowledge production and re-presentation of the subaltern, intersectionality provided a platform and outlet for those at the bottom of the social hierarchy. In the context of the CRC and through intersectional-like thought, the subaltern could represent themselves and their needs. However, as intersectional scholarship grew in popularity subsequently to Crenshaw's article, the concept began to change. Disappointingly, with intersectional scholarship's expansion came the gradual exclusion of the subaltern. Not only were they no longer at the center of intersectional analysis, but once more did not possess control over their own narratives. From being represented to re-presented, the subaltern and their struggles have grown quieter and quieter in intersectional discourse.

These numerous alterations as intersectional terminology entered the legal sphere, reached a wider academic audience, and entered broader socio-political discourse led to the development of a new kind of intersectionality. This appropriated and corrupted version of concept resembles what Nancy Fraser refers to as the "uncanny double"<sup>34</sup> of feminism in her article "Feminism, Capitalism, and the Cunning of History." This "strange shadowy version"<sup>35</sup> of the feminist movement denotes the new kind of women's activism which emerged as feminist ideology entered the realm of governance. Akin to intersectionality, aspects of feminist ideology had to be transformed, and the concept was, to an extent, co-opted. Drawing

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<sup>34</sup> Nancy Fraser, "Feminism, Capitalism, and the Cunning of History" in Winifried Fluck, Donald E. Pease, John Carlos Rowe (eds.) *Reframing the Transnational Turn in American Studies* (Hanover: Dartmouth College Press, 2011) at 387

<sup>35</sup> *Ibid* at 387

from Luc Boltanski and Eve Chiapello's *The New Spirit of Capitalism*,<sup>36</sup> which argues that each new era of capitalism appropriates the spirit of dissent that put into question the previous state of affairs, Fraser offers a history of second-wave feminism's corruption by capitalist structures. As we will argue in relation to intersectionality, Fraser posits that "the cultural changes jump-started by the second wave, salutary in themselves, have served to legitimate a structural transformation of capitalist society that runs directly counter to feminist visions of a just society."<sup>37</sup> Highlighting the ways in which second-wave feminism was manipulated to soften the introduction of neoliberalism and draw women of all classes into the working force, the philosopher reminds us to remain wary of the introduction of revolutionary and "outsider" ideologies into dominant discourses and structures. Using a similar critical lens, this thesis will explore the process by which intersectionality itself is undergoing a similar appropriating process, losing its revolutionary, liberatory essence in the process.

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<sup>36</sup> Luc Boltanski, Eve Chiapello, *The New Spirit of Capitalism* (London: Verso, 2005)

<sup>37</sup> Fraser, *supra* note 34 at 375



## Chapter 1

### Elucidating intersectionality's *raison d'être*: addressing the intersectional dilemma with genealogy

Prior to analyzing the ways in which intersectionality is being appropriated and why its recent developments are cause for concern, we must ask ourselves: what does intersectionality look like when uncorrupted? This necessary first step proves to be arduous as a symptom of intersectionality's foundering is its ever-increasing convolutedness. The deceptively simple question proves challenging even for leading figures in intersectional thought, with Patricia Hill Collins admitting that she struggles to define the concept. Explaining what she refers to as intersectionality's definitional dilemma,<sup>38</sup> Collins describes the strange feeling of her and her students finding themselves unable to define intersectionality despite having dedicated an entire module to it: "we thought we "knew" intersectionality when we saw it but couldn't quite define what it was."<sup>39</sup> Offering a complete and clear-cut definition of any immaterial concept is complex, and it is natural for any field experiencing growth to become progressively less homogenous. Nevertheless, the confusion surrounding almost every dimension of intersectionality is atypical. Its methodology, purpose, structure, functioning and very nature have become uncertain, and many misconceptions have become woven into its fabric. This lack of clarity, even on the most basic level of intersectionality, is perfectly exemplified when executing a simple google search of the term. Immediately upon researching the term, hundreds of images of Venn diagrams appear each independent circle representing different "parts" of identity such as race, ability, age, or gender, and their overlapping onto one individual. Although an appealing and evocative image to illustrate that the oppression faced by members

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<sup>38</sup> Collins, *supra* note 6

<sup>39</sup> *Ibid* at 2

of multiple marginalized groups is unique and of a dialectic nature, it is grounded in a false premise. This additive vision of identity, where a person's experience of sexism and racism will add up, presupposes that the different elements of a person's identity exist distinctly from one another and may be separated. As Julia S. Jordan-Zachery highlights in her aptly named piece "Am I a Black Woman or a Woman Who is Black? A Few Thoughts on the Meaning of Intersectionality," one's gender and race cannot be isolated. A significant part of intersectionality's intellectual project is dedicated to studying the intrinsically co-constitutive nature of different elements of identity and how they cannot be pulled apart, studied, or experienced independently of one another.<sup>40</sup> Still, this misleading image based on a conceptualization of identity that intersectional scholars reject is the first thing one would encounter when first trying to learn about intersectionality. From those first discovering it to seasoned intersectional scholars, it may seem that no one truly knows how to define intersectionality.

Using a Foucauldian genealogical approach, I will look back on intersectionality's history to tackle this definitional dilemma. By investigating and critically examining intersectionality's early epistemic roots, readers may gain a more meaningful understanding of the concept. Writing a comprehensive history of intersectionality would be an exhaustive task, instead, I will cover some defining moments of the concept's history. I will trace and analyze some of the situated nodal points of intersectionality's history and in social justice movements' pasts that have significantly impacted the development of intersectional-like thought. This epistemic history will give special attention to the role of critical traditions and resistant knowledge underlying intersectionality's conceptual origins. Most discussions regarding intersectionality

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<sup>40</sup> Julia S. Jordan-Zachery, "Am I a Black Woman or a Woman Who is Black? A Few Thoughts on the Meaning of Intersectionality" (2007) 3:2 *Politics and Gender* at 261

begin with the publication of Crenshaw’s “Demarginalizing the Intersection of Race and Sex”<sup>41</sup> or, in some cases, will go back to the civil rights and second wave feminist movements. This epistemic history will begin in the early 19th century. By taking the beginning of intersectional history to be 1989, our understanding of intersectionality becomes partial, contributing to the clouding of its meaning. A holistic study of intersectional history’s often-overlooked dimensions and actors should bring a new perspective on its *raison d’être*. After examining aspects of intersectionality’s epistemic emergence in the 19th century, we will critically review major historical milestones for the feminist and civil rights movements in the 1900s, discussing them in a more critical light. By revising the commonly told histories of social justice movements, we will better understand what caused the rise of intersectional ideas and how ideology and power have shaped certain dominant narratives about the Civil rights and feminist movements. This chapter will conclude by studying the emergence of the CRC, culminating in an analysis of the CRC Statement- the articulated voice of intersectionality and arguably the most explicit and thorough verbalization of intersectionality’s *raison d’être*.

I- Laying the foundations for the Combahee River Collective: emergences of intersectional-like thinking in the 19<sup>th</sup> century

A- Maria Stewart

“Methinks, I heard a spiritual interrogation — ‘Who shall go forward, and take of the reproach that is cast upon the people of colour? Shall it be a woman?’ And my heart made this reply — ‘If it is thy will, be it even so, Lord Jesus!’”<sup>42</sup>

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<sup>41</sup> Crenshaw, *supra* note 7

<sup>42</sup> Maria W. Stewart, “Lecture Delivered at Franklin Hall, Boston” in Bob Blaisdell (ed.), *Female Abolitionists* (New York: Dover Publications, 2021) at 52

As she passionately spoke these words in 1832, Maria Stewart made US history not only by being the first Black woman to speak publicly in front of a crowd of men and women but also by planting the first seeds for what would become intersectionality. Stewart's opus was one of the earliest articulations of a theology of liberation for Black women and would play a crucial role in sparking intersectional thinking. Her lifelong work in social justice began with her writing the subversive "Religion & The Pure Principles of Morality The Source Foundation On Which We Must Build" pamphlet in *The Liberator*.<sup>43</sup> Published in 1831, a time when publishing women- let alone a Black woman- was highly uncommon, the pamphlet addressed all Black women, regardless of their servitude status, and vehemently encouraged them to uplift one another in the abolitionist fight. The author drew attention to the fact that the US' prosperity had been made possible not through the inherent greatness of white Americans, as commonly told, but through exploitation. After the success of her pamphlet, Stewart began giving speeches where she would sow the seeds for the CRC to grow over a century later. A true precursor to intersectionality, she unequivocally challenged the status quo, questioned dominant narratives, and drew attention to the ways in which race, class and gender interact to create a specific form of marginalization. Stewart pioneered in recognizing and naming the layered nature of Black women's oppression. Her discussions of the unique marginalization Black women experienced were the first discernible outline of what would become the analytical framework foundational to the CRC and Kimberlé Crenshaw's theorizing. Drawing from her lived experience as a Black woman and encouraging others to do the same, she embodied the methodology and spirit of Critical Race Theory scholarship, where narrative, human connection, and subjectivity are central.

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<sup>43</sup> Maria W. Stewart, "Religion & The Pure Principles of Morality The Source Foundation On Which We Must Build" (1855) 25:8 *The Liberator*

Like the Collective, Stewart was a fervent advocate for collaboration amongst marginalized groups. Whilst the leading male figures within the abolitionist campaign dismissed women's rights issues, claiming such matters may alienate followers solely dedicated to the abolitionist agenda, Stewart repeatedly petitioned for Black activist communities to fight against sexism.<sup>44</sup> Correspondingly, she called on white women to empathize with and help the abolitionist cause. This dimension of her ideas is evocative of CRC member Audre Lorde, as both women centered much of their work on the idea that connection and collaboration were the solutions to many of society's ills. A precursor to Audre Lorde's powerful statement: "Your silence will not protect you,"<sup>45</sup> Stewart's persistent encouragement for Black women to empower themselves by speaking up evokes Lorde's and the CRC's conviction that language would give women the tools for their emancipation.

#### B- Trickle-down social justice and the invisibility of Black women

Despite Stewart and many other Black women playing critical roles in the abolitionist and women's rights movements, Black women remained systematically marginalized within them and broader society. Whilst these women's efforts and hard work were very much taken advantage of, any recognition of their struggles or explicit acknowledgement of their contribution was always refused. This relegation of Black women to second-class members of social justice movements is partly what makes recounting intersectional history so complex. In a phenomenon which could almost be described as "trickle-down social justice," as members of both groups, social justice movement's wins were, to an extent, victories for Black women.

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<sup>44</sup> Angela Y. Davis, *Women, Race & Class* (London: Penguin Random House, 1981) at 37

<sup>45</sup> Lorde, *supra* note 30 at 2

However, these achievements often reinforced the false gender/race dichotomy and put the different aspects of Black women's identity in opposition. They must either be silent about the sexism they experienced in the abolitionist community or pretend their race did not play an integral role in their experience of gendered oppression when in feminist circles. Black women were made invisible. Both social justice movements' continuous failure to consider Black women's unique socio-political status and struggles is what Crenshaw would later refer to as "political intersectionality."<sup>46</sup> Although Crenshaw used the term regarding the 1960s civil rights and feminist movements, this pattern of political marginalization can be observed centuries earlier and is a crucial element of what elicited the emergence of intersectional-like thought.

The Seneca Falls Convention (SFC) of 1848 exemplifies the complex nature of many intersectional nodal points in history. Often heralded as the US's first women's rights convention, the SFC offered a space for women to discuss their rights and create a specific political emancipatory agenda. However, it also solidified the exclusion of Black women and poorer white women from the feminist movement. The conference primarily focused on examining the role of the institution of marriage in robbing women of their independence, as well as the inferior treatment of women within educational and professional bodies. Those attending the conference explored the ways in which marriage robbed women of their property rights, leaving them vulnerable and financially dependent on their husbands. They criticized the patriarchal expectation that women ought to obey their husband's authority and the favouring of men in divorce laws. The convention is also one of the first formal recognitions of the negative impacts of marriage on a woman's psyche. Through much discussion, the

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<sup>46</sup> Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43:6 *Stanford Law Review* at 1251

participants concluded that marriage pushed women to be psychologically dependent on their spouse, leaving them with no self-confidence or self-respect and thus facilitating their oppression. Most crucially, the SFC culminated with drafting the Seneca Falls Declaration, which to this day is referred to as the “articulated consciousness of women's rights.”<sup>47</sup>

While the SFC undeniably played a vital role in furthering women’s rights, notably by creating a space for women to theorize and develop a clear political agenda for liberation, the convention also had a much darker side. Despite being attributed with the launching of the suffrage movement and finally giving a platform for women to voice their struggle, the convention’s definition and experience of womanhood were very narrow. The too often ignored reality is that not a single Black woman was allowed to attend the conference and that all those present were white middle to upper-class women.<sup>48</sup> Consequently, the convention did not address problems faced by Black women in the South or North, failing to mention Black women even once in the entire Declaration. This momentous occasion for the women’s rights movement disregarded the conditions of women outside the social class of the organizers entirely. Whilst an essential contribution to the analysis of the female condition, it excluded many American women. The Declaration’s total omission of Black women’s existence and struggles is emblematic of their constant symbolic exclusion from womanhood. By encapsulating the contradictory and layered nature of many historical events central to intersectionality’s development, the SFC serves as an important reminder that we must approach all historical narratives with a critical eye. The morally grey nature of social justice movements’ victories prompted the emergence of many of the pillars of intersectional thought.

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<sup>47</sup> Davis, *supra* note 44 at 46

<sup>48</sup> *Ibid* at 50

Even in instances where white women joined the anti-slavery movement, they did not do so out of solidarity with the Black community. The unpleasant reality behind the overly glorified recounting of collaborations by historiographers is that many women who argued against slavery were also avid defenders of the racial hierarchy. Although objecting to slavery for religious reasons, white women repeatedly argued for what they felt was their right to remain above Black men and women in the socio-political hierarchy. Historian Joel Kovel goes as far as to say that the “aim of the reform movement, so nobly and bravely begun, was not the liberation of the black but the fortification of the white, conscience and all.”<sup>49</sup> Their moral rejection of slavery was not accompanied by a rejection of white supremacy- quite the contrary. Despite Black women’s significant contribution to the feminist cause, white women collectively refused to see any shift in social status for Black Americans until their rights advanced. Often negated in dominant histories about the feminist movements, their opposition to Black social advancement played a significant role in the growth of the movement. The thought that black men might reach a higher socio-political status than white women was abhorrent to them and must be prevented at all costs. While white women were willing to reap the seeds Black women had sown, they continuously prevented them from being equal members of feminist movements as well as actively contributing to their persecution- much to the outrage of activists like Sojourner Truth.

### C- Sojourner Truth and the emergence of intersectionality’s bottom-up theorizing

A central figure in intersectional history, Truth drew attention to the systematic exclusion of Black women from the western political imagination of womanhood. When the ex-slave stood in front of an entirely white audience at the 1851 Women's Rights Convention to

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<sup>49</sup> Joel Kovel, *White Racism: A Psychohistory* (New York: Vintage Books, 1970)



denounce the class and racial bias in the feminist movement, she forced the women's rights movement to recognize the struggles of its least recognized members. By declaring: "I am a woman's rights,"<sup>50</sup> Truth shone a light on the chronically ignored condition of women like her. Her famous "Ain't I A Woman?" speech demonstrated that a Black women's experience of womanhood was entirely distinct from an upper-class white woman's. Drawing from her own life, she described the pain of having her children sold into slavery, her labour stolen from her, and the lack of recognition she experienced even upon escaping slavery. She pointed out that, unlike her white counterparts, she had never been treated as weak but rather always expected to work as hard as a man and had never been the object of gallantry. Yes, her experience of womanhood was incomparable to a middle and upper-class white woman, but it did not make it any less valid or painful. In fact, white women, despite their legal status as property, had never been subjected to the level of brutality or of dehumanisation Black women had experienced under slavery. She combined the calls for abolitionism with women's rights and urged listeners to broaden their understanding of femininity. Truth contribution to intersectional history does not limit itself to her calling attention to society's inadequate analysis of women's oppression but sets a precedent in rooting intersectional-like thought in the lived experiences of the subaltern, or in the words of Derrick Bell, those "at the bottom of the well."<sup>51</sup> This bottom-up approach to theorizing would later become characteristic to Critical Race Theory's epistemology and an essential component of the CRC's philosophy.

This bottom-up methodology lends itself particularly well to perhaps the most critical and characteristic dimension of intersectionality: the dismantling of the historically dominant single-issue analysis of societal oppressions. It was not until the CRCS that intersectional-like

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<sup>50</sup> Sojourner Truth, *Ain't I A Woman?* (London: Penguin Books, 2020) at 8

<sup>51</sup> Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 2018)

thought developed into a fully-fledged analytical strategy dissecting oppression's layered, dynamic, and co-constitutive nature. Nonetheless, one may find recognitions of the dialectic nature of racism, sexism, and race can across the 19th century. The work of Anna Julia Cooper is an excellent example of these early applications of intersectional-like thought to generate new ideas about society and potential reimaginings of existing dominant organizing structures. When encouraging in 1892 the broad reimagination of the American democratic system to help Black women face "both a woman question and a race problem,"<sup>52</sup> Cooper went beyond the cognizance of the interrelatedness of race, sex, and class oppression, drawing upon this realization to formulate a novel method of societal governance. Her analysis of Black women's maltreatment, centered around the idea that the gender and class oppression they experienced were co-constitutive, introduced an innovative lens through which to observe and study recognized social issues. Analogously, Ida B. Wells' deconstruction and analysis of the multi-faceted mechanisms that motivated lynching was also one of the first occurrences of an intersectional-like perspective being the foundation for studying complex social phenomena. Wells posited that lynching sparked from economic competition combined with gendered and racialized scripts of Black male hypersexuality.<sup>53</sup> She highlighted the hypocrisy of white men committing violent crimes to protect white women while raping and assaulting Black women with impunity in the South.<sup>54</sup> Her work was one of the first to analyze the construction of the myth of the Black male rapist and would prove very influential, inspiring thinkers such as Angela Y. Davis and Spivak. Despite these reflections falling short of an entirely constructed analytical framework, they played an incisive role in inspiring the Critical Race theorists the CRC and eventually Crenshaw would draw on. Whilst disconnected, they laid the foundations for more coherent intersectional analysis to become possible.

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<sup>52</sup> Zandria Felice Robinson, "Intersectionality" in Seth Abrutyn, (ed) *Handbook of Contemporary Sociological Theory* (cham, Switzerland: Springer, 2016) at 477-99

<sup>53</sup> *Ibid*

<sup>54</sup> Davis, *supra* note 44 at 155

II- The continued exclusion of Black women from social justice movements in the 20<sup>th</sup> century: the context for the rise of the Combahee River Collective

A- Second-wave feminism

Despite being frequently discussed as the by-product of the 1960s second-wave feminism and civil rights movements, intersectionality emerged as a reaction to the persistent exclusion of Black women from these campaigns. Following the footsteps of 19th-century social justice movements, white women entirely ran the feminist campaign and refused to acknowledge the racism experienced by Black women. Correspondingly, the antiracist movement was primordially male and refused to address the sexism experienced by its female members. Once more, women of colour were left without political support or recognition, experiencing what Crenshaw called “political intersectionality.” This phenomenon is what prompted the formation of the CRC. The racist and sexist rhetoric experienced within both campaigns profoundly impacted the collective’s ideas and politics. We will study the oppressive rationale fuelling both social movements’ further marginalization of Black women in the hopes it will deepen our understanding of the CRCS and, thus, intersectionality itself.

In *ain’t i a woman: black women and feminism*, educator and activist bell hooks states: “Every [social justice] movement in America from its earliest origin to the present day has been built on racist foundations.”<sup>55</sup> Notwithstanding its appearance nearly 100 years after Sojourner Truth’s powerful condemnation of exclusionary behaviours within liberation campaigns, the 1960s second-wave feminist movement echoed many of the oppressive ways of its predecessor. In a similar fashion to the 1800s’ women’s rights campaigns, which were formed partly to

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<sup>55</sup> bell hooks, *ain’t i a woman: black women and feminism* (New York: Routledge, 2015) at 124

ensure that Black men's legal and political status would not surpass theirs; second-wave feminism arose as a reaction to the emergence of the 1960's black liberation movement. Led entirely by white women, the modern feminist campaign adopted a structure that resembles the 1800s movement. This lack of diversity in its leadership was reflected in the politics and agenda of the feminist movement. Unlike its 1800s antecedent, the second-wave feminist cause developed a more subtle and insidious form of racism.

Rather than overtly vocalizing beliefs of their innate racial superiority, white feminists ignored the existence of Black women entirely. Making the feminist movement truly "theirs,"<sup>56</sup> white American women discussed, depicted, and wrote of their experience of womanhood as if it were universal. Despite claiming to be the voice of all women, these activists did not see themselves as part of the same sisterhood as their Black counterparts. This was illustrated through the constant dismissal of experiences of womanhood unique to Black women and the language used in dominant feminist discourse. A common strategy in the second-wave feminist movement was to draw analogies between women's social conditions and those of the African American community. Although attempting to create a false sense of unified womanhood, it was clear from how white women drew a distinction between women and Black individuals that they saw these categories as entirely distinct. White women did not see Black women as one of them. Before anything else, Black women were the racial other. White women's monopoly over the title "woman" also allowed them to deflect from their racism and classicism. By not openly stating their allegiance to their race, they did not have to overtly express their endorsement of the racial status quo benefitting them. Furthermore, the analogies between the women and Black Americans' poor treatment revealed the outrage white women felt at being treated as poorly as a Black person. White women's superiority to the racial other felt so evident

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<sup>56</sup> *Ibid* at 136

that anything questioning this inherent truth was an affront. These representations of white womanhood as the default experience of sexism, use of alienating analogies, and thinly veiled commitment to the racial order made it clear that the feminist movement would not be the space where Black women could rise above their status as subaltern.

#### B- The 1960s Black liberation movement

In a disheartening twist of fate, Black women would experience further dismissal and oppression in the black liberation movement. Once more, they were told they must abandon a layer of their identity and pretend their status as women did not play an integral role in their experience of racism. They were either Black or women but could not exist in the political stage as both. Civil rights leaders, an overwhelming majority of whom were men, argued that including causes impacting specifically Black women would confuse and deter those only concerned with Black liberation from joining the movement. This dismissal was fuelled partly by the leaders' fear that if Black women organized around their specific needs, they would lose valuable assets to the black liberation effort. Additionally, the refusal to acknowledge the sexism Black women experienced, notably within the movement, was demonstrative of its male member's unwillingness to complicate their understanding of their own identity as both victims of racism in tandem with being sexist oppressors.<sup>57</sup> Whilst liberation from racist oppression was the civil rights movement principal aim, it was also an opportunity for Black men to reassert their dominance over Black women. As Kovel posits in *White Racism: A Psychohistory*,<sup>58</sup> the 1960s black liberation movement<sup>59</sup> was an opportunity for Black men to reclaim their manhood by proudly embracing the patriarchy and making it their own.

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<sup>57</sup> hooks, *supra* note 55 at 88

<sup>58</sup> Kovel, *supra* note 49 at 58

Challenging the sexism within the movement equated to challenging the movement and black liberation itself.

Black men's refusal to admit that racism was not the only oppressive force in Black women's lives, premised on the idea that Black women's issues were not Black people's issues, mirrored the rhetoric of the second-wave feminist movement. Much like white women depicting themselves as the default for womanhood, Black men used the civil rights movement to tie blackness with masculinity. As bell hooks explains: "When racism prevented black people from attaining social equality, black men responded as if they were the sole representatives of the black race and therefore the sole victims of racist oppression."<sup>59</sup> Black women's constant exclusion from womanhood and blackness reinforced their status as subalterns. Their constant relegation to the status of second-class members of marginalized groups left Black women without a voice on the political stage. They had been made invisible.

### III- The articulated voice of intersectionality: studying the *CRC*

#### A- The formation of the Combahee River Collective

Having been forced into silence by the very groups meant to advocate for their rights, it became clear that women of colour would have to fend for themselves if they were ever to receive the social, legal, and political recognition they deserved. For decades, Black women had tirelessly devoted their energy to supporting social justice movements under the false promise that they, too, would benefit from the progress they made possible. Much like Stewart when she declared almost 150 years prior: "We have pursued the shadow, they have obtained

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<sup>59</sup> hooks, *supra* note 55 at 147

the substance; we have performed the labor they have received the profits; we have planted the vines, they have eaten the fruits of them,”<sup>60</sup> Black women were enraged. Sick of waiting for the rights they had helped those above them in the socio-political order gain to trickle down to them, a group of Black, lesbian women formed to address specifically Black women's struggles, at last. Formed in 1974, the CRC drew from the work of Critical Race Theorists and Black feminists to challenge the single-issue approach adopted by other dominant social justice movements. The collective provided a space where Black women could, at last, voice their struggles and develop a liberatory strategy of their own without being silenced. Finally, the subaltern could speak.

#### B- The development of a coherent intersectional framework

Members of the CRC drew on their unique insight as the subaltern to develop a new analytical framework to examine their marginalization and formulate a strategy of liberation. Inspired by the critical race theory methodology, their scholarship was rooted in their subjective experiences and rejected dominant narratives around what could constitute “valid” knowledge. By grounding their scholarship in their subjective experiences rather than pseudo-objective observations, they challenged what Howard Becker described as the “hierarchy of credibility.”<sup>61</sup> The term alludes to influential members of society delegitimizing and devaluing those below them to increase their credibility. The invalidation of alternative forms of knowledge allows those in power to control dominant cultural narratives, thus preserving the social order. Antonio Gramsci would refer to this phenomenon by which the worldviews of the ruling class become a society's cultural norms as “cultural hegemony.”<sup>62</sup> By devaluing

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<sup>60</sup> Maria W. Stewart “An Address: African Rights and Liberty” (1833)

<sup>61</sup> Howard S. Becker, “Whose Side Are You On?” (1967) 14 *Social Problems* at 241

<sup>62</sup> Antonio Gramsci *Selections from the Prison Notebooks of Antonio Gramsci* (New York: International Publishers, 1971)

knowledge rooted in subjective experiences of oppression, those benefiting from the status quo ensured the subaltern was spoken about rather than listened to, thus maintaining control over them. Rejecting the idea that subjective knowledge was inferior to “objective” perspectives, the CRC argued that those who experienced oppression understood how it operated most as well as the consequences of it. Inspired by Critical theory, the CRC opposed the idea of objective truth regarding the scholarship of injustice. Indeed, as oppressive power structures and perspectives are omnipresent, no one can exist outside them. Those who do not experience oppression cannot write more objectively than its victims on the matter as they are also part of the same system. The only difference is that they benefit from it. It is solely because of their dominant status and cultural hegemony, where the economic, social, and political state-of-affairs beneficial to those in power is depicted as natural, that they perceive their experience within oppressive power structures as objective facts. While an academic who has never experienced racism may believe they write objectively about it, their privilege shapes their perception of what is neutral. Opposing this repressive and distorted vision of knowledge, the CRC heavily relied on personal narratives, parables, fictional stories, and other forms of proudly subjective knowledge to develop a unique approach to social justice theorizing and praxis.

Forsaking the trickle-down social justice they had been subjected to, they adopted a bottom-up approach to theorizing. These women repudiated traditional approaches to social progress, where members of marginalized groups campaign to their dominators to grant them rights, finding them not only to be ineffective but to perpetuate oppressive hierarchal notions. By making equality with the dominant group of society their goal, social justice movements failed to challenge the deeper structures which allowed for injustices to occur. Rather than focalizing on those in power, those most marginalized in society were the nucleus of the CRC’s theorizing



and praxis. Although centring their scholarship around their own experience, women of the CRC were ardent supporters of other marginalized people, with Lorde positing that “Without community there is no liberation [...]. But community must not mean a shedding of our differences, nor the pathetic pretence that these differences do not exist.”<sup>63</sup> While they had felt abandoned by the feminist and Black liberation movements and categorically refused to leave aspects of their identity to conform to either campaign, they felt solidarity with their members. Rejecting lesbian groups’ pushes for separationism from Black men, the CRC argued for adopting a collaborative approach between marginalized communities to uplift one another. Supporting Black men in their quest for liberation, members of the CRC still felt the movement was both too narrow and not ambitious enough when challenging oppressive structures. These Black feminists notably thought that the Civil rights movement was not only too dismissive of women’s struggle but also excessively focused on the issues of middle-class Black American men seeking equal access to white consumer spaces. The Collective argued that the racial order could not be meaningfully challenged unless capitalism itself was called into question. Reflecting on the issue, Martin Luther King Jr. himself recognized that “What does it profit a man to be able to eat at an integrated lunch counter if he doesn’t earn enough money to buy a hamburger and a cup of coffee?”<sup>64</sup> Unlike the movements that had excluded them, the CRC sought liberation for all marginalized people and believed that their subaltern-centric approach would be the way to do so. As asserted in the CRCS: “If Black Women were free, it would mean that everyone else would have to be free since our freedom would necessitate the destruction of all the systems of oppression.”<sup>65</sup>

### C- The articulated voice of intersectionality: *The Combahee River Collective Statement*

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<sup>63</sup> Lorde, *supra* note 30 at 95

<sup>64</sup> Martin Luther King Jr., *The Radical King* (Boston: Beacon press, 2015) at 250

<sup>65</sup> Akasha (Gloria T.) Hull, Patricia Bell Scott, and Barbara Smith (eds.), *supra* note 2 at 18

Published in 1977, the Combahee River Collective Statement is the culmination of these subaltern-centric discussions. The Statement voiced the beliefs, aims, and origins of CRC, and analyzed the obstacles to forming a Black feminist social movement. Building upon the insights of Black women such as Maria Stewart, Sojourner Truth, Anna Julia Cooper, and Ida B. Wells, the CRC based its ethos on the notion that oppressions occur simultaneously. Their explicit recognition “that the major systems of oppression are interlocking”<sup>66</sup> did not only advance the thoughts of their predecessors but would be the theoretical foundation for Crenshaw’s famous article and subsequent intersectional scholarship. Another critical dimension of the Statement is that it was the first written piece to employ the term identity politics. Deployed to describe how “the most profound and potentially most radical politics come directly out of”<sup>67</sup> Black women’s identity, the term also designated the subaltern’s particular openness to the potential of radical politics and activism due to their heightened vulnerability. Using these concepts as starting points, the Collective developed an entire framework of analysis with the aim of reorganizing society to meet the needs of the most oppressed. Critiquing and analyzing the simultaneous oppressions Black women suffered, the CRC concluded that the dominant single-issue analysis of injustice not only effaced the lived experience of the subaltern but could also never be a foundation for an effective emancipatory “plan of action.”<sup>68</sup> Moreover, whilst drawn initially together by antiracist and antisexist ambitions, the CRC extended their critiques to other oppressive structures, as illustrated by the CRCS condemnation heterosexism and capitalism. Denouncing how axioms of power such as law constructed and reinforced racism, heteronormativity, classicism, and sexism, the Collective radically concluded that “[...] the

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<sup>66</sup> *Ibid* at 14

<sup>67</sup> *Ibid* at 16

<sup>68</sup> *Ibid* at 14

liberation of all oppressed peoples necessitates the destruction of the political-economic systems of capitalism and imperialism as well as patriarchy.”<sup>69</sup>

Indeed, the early intersectional project did not limit itself to proposing a novel methodology and framework for analyzing multiply occurring oppressions but also sought to inform praxis. Unabashedly revolutionary, the CRCS clearly states it is committed to the dismantling of capitalism, imperialism, and patriarchal power structures: “As Black feminists and lesbians, we know that we have a very definite revolutionary task to perform, and we are ready for the lifetime of work and struggle before us.”<sup>70</sup> Following a similar logic to Paulo Freire in *Pedagogy of the Oppressed*,<sup>71</sup> it was clear to the members of the CRC that actions must follow cognition. The practical reality of their marginalization was far more than an academic exercise for these women. Their theorizing aimed to create a political strategy that could lead to their liberation. The CRC’s belief that ideas in and of themselves are not enough to foster social change is crucial to understanding intersectionality and grasping its *raison-d’être*. Named after Harriet Tubman’s famous raid on the Combahee River and explicitly inspired by the lifelong work of Black feminists working to unshackle the subaltern, revolutionary acts of liberation are the heart of the CRC.

Whilst far from solving intersectionality’s definitional dilemma, this brief exploration of the paradigm’s early intellectual roots has hopefully offered some insights into its nature. From the first recognitions of the dialectic nature of race, class, and gender by Maria Stewart to the

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<sup>69</sup> Akasha (Gloria T.) Hull, Patricia Bell Scott, and Barbara Smith (eds.), *supra* note 2 at 16

<sup>70</sup> *Ibid*

<sup>71</sup> Paulo Freire, *Pedagogy of the Oppressed*, 8<sup>th</sup> edition (New York: Continuum, 2000)

drafting of the revolutionary CRCS, intersectionality has developed from a set of ideas and principles to a movement and, eventually, an academic field. Some recurring themes have emerged through this genealogy, clarifying what intersectionality is as a methodology, an analysis, a practice, as well as its aims. The first pattern to appear through this critical history is that intersectional-like thought is the by-product of Black women's activism and scholarship, emerging in reaction to their unique socio-economic status and chronic exclusion from social justice movements. Without Black women, there would be no field of intersectionality today. A second defining characteristic of intersectionality which has become apparent is its unique methodology. Adopting a bottom-up approach to theorizing, the lived experiences of oppressed people are at the center of intersectional analysis. This subaltern-centric approach relies on subjective forms of knowledge, allowing those invisible in the dominant social frameworks to voice their struggles. The intersectional methodology is also recognizable through its favouring of dialogue and collaboration to create scholarship and challenge the hierarchal nature of knowledge production. Seeking to describe and examine the oppression they experienced, intersectional pioneers developed a distinct analytical framework recognizing that different forms of oppression occurred simultaneously to marginalize their victims uniquely. By recognizing that systems of oppression were interlocking and did not operate as "unitary, mutually exclusive entities,"<sup>72</sup> these scholar-activists invented a new lens to study and potentially prevent various forms of oppression. This innovative angle pushed early intersectional thought to reject patriarchal, capitalistic, heterosexist, and racist power structures. Finally, this genealogy brings some clarity as to intersectionality's aim. While knowledge production is a significant part of the intersectional project, it is more than a simple set of ideas or a critical methodology. Intersectional-like thought has always been fuelled by the desire for social change, aiming to improve and inform political action. Through this brief

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<sup>72</sup> Collins, *supra* note 6 at 2

history, we may discern that intersectionality marries cognition and praxis to create a maximally liberatory ideology and strategy for the subaltern.

## Chapter 2

### A new era: intersectionality post-Crenshaw in the legal world

Having deepened our understanding of intersectionality and its *raison-d'être* through a genealogy of its emergence, we will now delve into what can only be described as the most significant crossroad in intersectional history. The publication of Crenshaw's fateful 1989 article ushered intersectionality into a new, legal era. With this modern era came a remarkable shift in the meaning attributed to intersectionality. Synonymous with drastic transformations in intersectional discourse's tone, structure, and scale, this new era has seen the concept transform into something entirely novel. While the launching of intersectionality into the legal field responded to a need for a more complex understanding of identity and multiple discriminations in the judiciary, this thesis will argue that this introduction also prompted the co-option of the concept by government bodies. Although sparking remarkable growth in intersectional discourse and expanding a set of ideas into a new field, this enlargement has coincided with intersectionality having to abandon core aspects of its identity. Subsumed by one of the very centers of power it critiqued, what once was in part a denunciation of Western liberal legality has transformed into a sub-category of discrimination law. This filtered version of intersectionality, hollowed from its revolutionary dimensions and roots in resistant knowledge to fit legal molds, is what I will refer to as intersectionality-lite. The development of intersectionality-lite following Crenshaw's article allowed for the appropriation of intersectional terminology in broader socio-political discourse unrelated to the CRC's aims, the exclusion of the subaltern from its methodology and analysis, as well as the sparking of intersectionality's definitional dilemma. This will be explored subsequently.

This chapter will begin with an analysis of Crenshaw's 1989 and 1991 articles. We will examine what prompted her to introduce intersectionality's analytical strategy to the legal world and study the gap that a more intersectional approach to discrimination aimed to fill. After considering the advantages of intersectional discrimination law and its potential as a tool for remedying injustices, we will explore why its integration into the legal arsenal is bound to limit intersectionality severely. The shoehorning of intersectionality into legal frameworks may not simply limit the potential of what once was a revolutionary ideology and analytical tool but perhaps corrupt it entirely. Once subsumed by the legal system, intersectionality loses too much of its identity and characterizing components to be anything more than a footnote in a structure which remains oppressive. No longer challenging the patriarchal, capitalistic, imperialist, and racist organizations working together to maintain the oppressive *status quo*, intersectionality is at the risk of becoming obsolete. When pointed at the law, the paradigm holds much more potential and transformative power. By not being absorbed into the law and maintaining some distance from the institution, intersectionality would not fall into the trap of assuming the law is the solution to societal oppression. The presupposition that inequality is the result of man-made errors in a system which could theoretically be just if adapted heavily relies on dominant narratives glorifying the state's institution. It is essential to remember that perhaps inequality is not the legal system failing to operate correctly but rather doing precisely what it is designed to do: preserve the current, unjust state of affairs. This chapter will conclude with a critical analysis of the legal teleology to demonstrate that intersectionality cannot substantively reach its liberatory goals within the legal system but must remain a critical outsider. To force intersectionality into the legal system is an appropriation of a revolutionary concept and contributes to its general corruption.

## I- Intersectionality's debut in the legal world

### A- Filling a gap

In 1974, General Motors (GM) fired 5 of its employees in the context of a broader company layoff. Following their “last hired-first fired” layoff policy mandated by the GM’s collective bargaining agreement with their workers’ Union, seniority was the determining factor in selecting those who would be terminated. This seemingly neutral policy did not mention race or gender, simply operating on the impartial and inoffensive criteria of seniority. However, as victim of these layoffs and plaintiff in *DeGraffenreid v. General Motors*,<sup>73</sup> Emma DeGraffenreid would highlight, this policy disproportionately impacted Black women. Renowned for its discriminatory employment practices before the passing of Title VII of the Civil Rights Act in 1964, prohibiting employment discrimination “because of such individual's race, color, religion, sex, or national origin,”<sup>74</sup> GM had only recently begun to employ Black women. As the “last hired-first fired” layoff policy targeted those employed after 1970, an inevitable consequence was that it perpetuated the effects of GM’s past discriminatory behaviors. The five plaintiffs rightly argued that although the seniority-based layoffs might have sounded as though they operated outside of race and gender *prima facie*, Black women were bound to be their primary victims for no reason other than their identity. As the discrimination experienced was a synergetic combination of racism and sexism, the claimants sought for their case to be classed as an occurrence of both sex and race discrimination. Rejecting the idea of a compound claim, the court examined the sex and race discrimination claims independently, only to reject them.

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<sup>73</sup> *DeGraffenreid*, *supra* note 23

<sup>74</sup> *Civil Rights Act* § 7, 42 U.S.C. § 2000e et seq (1964)



Pointing to GM's employment of white women before 1964 as the basis for their refusal, the courts argued that since not all women had been barred from employment before the passing of Title VII, no sex discrimination had occurred. Despite Black women's status as females playing an intrinsic role in why they were they were last employed and thus first fired, the fact their experience was not shared with their white counterparts was used to justify the dismissal of their claim. It is concerning that even within the field of anti-discrimination law, which in principle aims to correct social injustices, doctrine is centered around white women. The courts' demand for Black women's experience to mirror their white counterparts' reinforced the notion of whiteness as the default for womanhood. Rather than recognize the gendered aspect of the discrimination experienced by DeGraffenreid and her fellow plaintiffs, the courts recommended they join an ongoing race discrimination case against GM. With history repeating itself, Black women's race and gender were pitted against each other. In this instance, the law decided the plaintiffs' identity as Black individuals trumpeted over their identity as women.

Despite recognizing that these women had been discriminated against, Judge Wangelin refused to create a new "super-remedy"<sup>75</sup> combining race and sex discrimination. The strange turn of phrase illustrates the courts' unwillingness to change their problematic ways, even if it means neglecting the needs of marginalized individuals. It is also rather curious for the remedying of explicit discriminatory behavior to be discussed as if it were something extra the plaintiffs would receive rather than correcting an injustice that had occurred. Relying on the fact that the plaintiffs had not cited other instances of the use of distinct the category of "black women" for a discrimination case, the courts dismissed the claim. This blatant rejection seems illogical when the judgment is littered with nonchalant acknowledgements of the oppression

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<sup>75</sup> *DeGraffenreid, supra* note 23 at [143]

suffered by Black women. These comments are particularly troublesome as it seems the courts are aware of the plaintiffs maltreatment, but do not wish to help them. Judge Wangelin's *obiter* remark that: "The prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box,"<sup>76</sup> connotes this disinterest in remedying these injustices. Indeed, at the basis of this floodgate argument is the awareness that instances of complex discrimination are not rare. The admission that DeGraffenreid and the class she represented had experienced discrimination, but refusal to right GM's wrongs if it meant going against common practice reveals the legal system's troublesome priorities. The law's commitment to the *status quo* seems stronger than its dedication to justice. One cannot help but worry that if correcting injustices and righting discriminations are not the primary aims in anti-discrimination law, they may not be priorities at all for other branches of the law.

*Moore* further illustrated the legal system's biases and shortcomings when dealing with occurrences of discrimination against Black women. Ruled seven years after the disappointing *DeGraffenreid* judgment, *Moore* further demonstrated the inadequacy of discrimination law's single-axis approach as well as highlighting its hidden ideological commitments. In the case, Tommie Moore had sued her employer, Hughes Helicopters (HH), on the grounds that the company's promotion of leadership and higher-level roles discriminated against Black women. Presenting statistical data demonstrating the company's propensity to employ significantly more men than women, as well as more white men than Black men, she sought compensation on behalf of HH's Black female employees. Despite the evidence provided, Moore's claim was rejected, the courts once more refusing to create a discrimination class for Black women. Echoing the same exclusionary reasoning as *DeGraffenreid*, this dismissal was justified on the

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<sup>76</sup> *Ibid* at [145]

ground that since Moore and the represented class's complaint was not shared by the white female employees within the company, it had no standing. With white women never having to prove that their claims for sex discrimination were also applicable to women of color, this double standard makes it clear that whiteness was the norm in the eyes of the law. The white experience was treated as the standard to be met, and those existing outside of it were "the other."

*DeGraffenreid* and *Moore* are fitting examples to demonstrate the law's role in consolidating and constructing the idea of the racial "other." In *The Racial Contract*,<sup>77</sup> Charles Mills posits that white supremacy is a political system depicted as the natural order through cultural hegemony. Mills argues that 18<sup>th</sup>-century philosophers' works, upon which lie the foundations of the Western legal system and government, have actively contributed to the establishment of the racial contract. This contract codifying race relations is the hidden by-product of Rousseau social contract and sought to legitimize white supremacy. Following this logic, racism not accidental but rather an ensemble of regulated formal and informal ways for white westerners to oppress and take advantage of those labeled as racial other. With 18<sup>th</sup> century theories strengthening and justifying the social, political, and intellectual frameworks which validated Eurocentric morals and ideals at the core of the legal system's early roots, racism is woven into the law's fabric.<sup>78</sup> Often proclaiming itself a neutral arbiter, Mills points out that the law remains a tool to reinforce racial domination and the oppressive majority's interests.<sup>79</sup> *DeGraffenreid* and *Moore* perfectly exemplify this phenomenon, where both judges rejected Black women's claims on the basis that they did not reflect white women's experiences. Much like 19<sup>th</sup>-century and second-wave feminist movements did, the courts

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<sup>77</sup> Charles W. Mills, *The Racial Contract* (London: Cornell University Press, 1997)

<sup>78</sup> *Ibid*

<sup>79</sup> Victor Ray, *On Critical Race: Why It Matters & Why You Should Care* (New York: Random House, 2022)

reinforced the idea that whiteness was the *a priori* model for womanhood. By creating a harmful precedent for using white women's experience as the standard for sex discrimination cases, both judgments strengthened white supremacy, abiding by the racial contract. With the implicit refusal to recognize Black women as equally female encoded into the law, it seems legal institutions were above all loyal to this contract. Gradually, racism has become a structural component of legitimate social institutions and, through their control, harms minorities.

These elements hint at a potential incompatibility between the law and intersectionality. As explored in chapter 1, some of the latter's chief aims were the challenging of structural racism as well as Eurocentric, exclusionary Western logic. However, cases like *DeGraffenreid* and *Moore* suggest the law may have an ideological commitment to the maintenance of oppressive ethnocentric narratives. The legal system is an undeniably integral element to the operation of structural racism. Thus, one cannot help but wonder whether the law could meaningfully help further intersectionality's aims, or if it is bound to be an obstacle that intersectionality must overcome.

Interestingly, in both *Moore* and *DeGraffenreid*, the judges relied on the plaintiff's failure to provide, respectively, data or a legal precedent with Black women as the central subject matter as a ground to dismiss their claims. Indeed, Judge Wangelin was critical of DeGraffenreid's failure to provide a precedent for using "black female" as a class in a discrimination case despite being acutely aware that no such precedent existed. Likewise, Judge Kelleher stated that Moore should have shown data specific to Black women rather than those she provided, which evidenced the disparities between white men and women and between black and white men. Of course, no such data existed. We may attribute this to the

fact that society constantly ignored Black women, deeming their needs and experiences were unworthy of examination. This social invisibility is characteristic and a reason for Black women's status as subalterns. While seemingly anecdotal components to both judgments, this setting of unjust and unobtainable standards remains telling. Worryingly, these requests are either motivated by the judges' willful ignorance of the chronic disregard of Black women in society, or by their malicious reliance on this fact to further marginalize them.

It is thus clear that the legal system's exceedingly simplistic conceptualization of oppression, combined with its flawed methodology, prevents multiply disadvantaged individuals from accessing remedies granted to those experiencing singular forms of discrimination. The single-axis approach to discrimination employed by courts is insufficient and does not reflect the reality of oppressed minorities. By failing to grasp that Black women's experiences are entirely distinct from their white or male counterpart, the legal system cannot correct the injustices done to these women, contributing to their marginalization. Indeed, if Moore had been a Black man or a white woman, she would have been more likely to receive a remedy on behalf of her class. Additionally, if Judge Kelleher grasped that Moore had no way of providing data evidencing specifically the unequal treatment of Black women, he may have been more likely to accept her claim. However, as a Black woman, her race and gender were set in opposition; rendering her more vulnerable. As Crenshaw eloquently observed, in anti-discrimination law: "Black women are protected only to the extent that their experiences coincide with either of those two groups."<sup>80</sup>

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<sup>80</sup> Crenshaw, *supra* note 7 at xvi

## B- Crenshaw's solution

The single-axis approach currently employed by courts in discrimination cases is inadequate. Not only does it fail to reflect the reality of oppressed minorities accurately, but it is also illustrative of the law's oppression of the subaltern, and its role in sustaining the racial order. Indeed, the legal system's inability to recognize its subjects' identities and the complexity of their experience exacerbates hierarchal power relations. This floundering is harmful to those under the law, but also to the rule of law itself.

As the legal system derives legitimacy from its subjects' belief in it adequately capturing reality and remedying life's problems, if this illusion is shattered, its legitimacy may be put into question. The disappointing reality that the law often finds itself unable to remedy clear injustices weakens the rule of law. This gap, which "Demarginalizing the Intersection of Race and Sex" calls attention to, although hidden, is in dire need of addressing. To tackle this issue, Crenshaw attempts to explain Black women's condition through a new lens. In her article, she famously likens Black women's experience of subjugation to a road intersection:

Consider an analogy for 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 happened in 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.<sup>81</sup>

The eponymous metaphor creates a vivid image in the reader's mind, capturing the layered and dynamic nature of oppression. Crenshaw suggests intersectionality is a solution to scenarios

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<sup>81</sup> Crenshaw, *supra* note 7 at 149

where a subject is “hit from multiple directions,” turning to the law only to find that their experience of inequality does not fit the dominant framework and cannot be helped.

With the publication of her initial article bringing much-needed dynamism to academic discussions investigating the prevailing unjust social order and sparking the development of a new field of legal scholarship, Crenshaw sought to uncover how to make intersectionality fit into the puzzle that is law. Drawing from the CRC and critical race scholars, she states intersectionality “denotes the various way[s] in which race and gender interact to shape the multiple dimensions of Black women’s [...] experiences.”<sup>82</sup> By recognizing that forms of oppression do not exist independently but occur all at once, the legal system would be better equipped when tackling compound discrimination cases. The acknowledgement that Black women’s experience of sexism and racism were qualitatively and structurally unique to any other group in society was a primordial first step in Crenshaw’s plan to correcting the flawed legal system.<sup>83</sup> At last, the law would reflect and address the experiences of members of multiple marginalized groups. Furthermore, the use of intersectional frameworks would hopefully generate new solutions to these problems.

In her 1991 piece: “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”<sup>84</sup> Crenshaw extends her intersectional analysis beyond the legal sphere and to examine other structures of power critically. Further elaborating on her 1989 article, Crenshaw distinguishes between three types of intersectionality. She designates the first kind of intersectionality as the “structural” kind.<sup>85</sup> Referring to American social institutions’ failure to comprehend the intersections of different aspects of identity, structural

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<sup>82</sup> *Ibid* at 150

<sup>83</sup> Crenshaw, *supra* note 47 at 1245

<sup>84</sup> *Ibid*

<sup>85</sup> Crenshaw, *supra* note 7 at 1245

intersectionality produces the framework necessary for other kinds of intersectional oppression to occur. Crenshaw highlights that this failure to account for interlocking systems of oppression is also present in social justice movements such as the antiracist or feminist movements. The author labels this phenomenon as “political intersectionality.”<sup>86</sup> Echoing the CRCS’s criticism, Crenshaw demonstrates how the color and gender blindness of the 1960s feminist and antiracist movements lead to the political alienation of Black women. With second-wave feminism being run by and for white women and the black liberation movement dominated by middle-class men, social justice movements supposedly designed to help Black women failed to consider their unique status and struggles. Crenshaw posits that these social and political alienations are worsened by “representational intersectionality.”<sup>87</sup> This third type of intersectionality alludes to the scarcity of positive Black female representation in the media. The combination of three forms of intersectional oppression creates the conditions for Black women’s subjugation. For Black women to be free, all three types of intersectional oppression must be dismantled.

It is undeniable that Crenshaw's contributions to intersectional-like thought have advanced the concept significantly and provided fascinating extensions to the CRC's insights. Still, her perspective cannot be taken as the starting point of intersectionality or as the sole definition of the paradigm. As our tracing of intersectional-like thought and analysis of Crenshaw's articles have revealed, despite sharing many similarities, intersectionality, as conceptualized by the CRC and by Crenshaw, are two different things. With the latter only importing intersectionality's analytical framework to law and academia. Intersectional thought's revolutionary component and rejection of dominant power structures such as law have disappeared in Crenshaw's formulation. Whilst intersectionality's aim remains social justice,

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<sup>86</sup> *Ibid* at 1251

<sup>87</sup> *Ibid* at 1282



the extent of its critique is not as radical. Most importantly, Crenshaw's conceptualization changes an unorthodox "outsider" idea into a somewhat palatable analytical tool. While attempting to transform the legal system from within through the slow and partial introduction of CRT tenets may seem like the only option to advance the cause of racial justice, this method's revolutionary potential remains limited and may come at a cost for intersectionality. Before exploring these ideas more in depth, we will explore other critiques of Crenshaw's conceptualization of intersectionality.

### C- Some conceptual critiques of Crenshaw's work

Although a highly evocative and accessible image to describe multiply occurring discriminations, Crenshaw's road intersection metaphor is not without its flaws. As Jordan-Zachery highlights, this formulation of intersectional discrimination presupposes the existence of distinct identity categories.<sup>88</sup> For the roads of Crenshaw's image to intersect in one spot, they must exist independently in the first place. When applied to identity, this would mean that it would be possible to separate one's experience of their race, gender, sexuality, or any other element of their identity. As we briefly touched upon, intersectional scholars argue that these categories construct and constantly bleed into one another. As individuals do not experience their race or gender distinctly of one another, grounding scholarship and laws in analogies reinforcing the idea that they exist separately is dangerous. Suppose the ideas at the foundation of our theorizing and legislating are rooted in inaccuracies. In that case, it is more likely that they will fail to understand the discrimination experienced by those under it and will also be unable to address them. Although a difficult task, we must imagine a framework that captures

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<sup>88</sup> Jordan-Zachery, *supra* note 40 at 260

the fact that different components of identity are intrinsically co-constitutive and cannot be studied or experienced independently.<sup>89</sup>

Following Jordan-Zachery's logic, we must ask ourselves who defines these "identity categories" and why. Considering the extent to which these categories are socially constructed assists in deepening our understanding of identity, thus warranting further investigation. An improved comprehension of social mechanisms and their interactions with identity may also help inform praxis and law. Works such as Foucault's *The history of sexuality*,<sup>90</sup> in which he traces the construction of the idea of individual sexuality, positing it is a tool of dominance created by 17<sup>th</sup>-century bourgeoisie, offer fascinating insights into why and how specific identity labels are constructed. In the case of race, one might look at the 2000 Human Genome Project, which mapped and categorized the range of human genetic variation, confirming that all human beings, regardless of race, were 99.9% alike genetically. Such data further supports Mills and other critical race theorists' arguments that race is a social category before being a biological one. Far from suggesting that race or sexuality are any less real due to being socially constructed, these theories encourage us to think critically about the political and ideological underpinnings of these categories. Often fabricated to homogenize and organize groups on a hierarchy, these constructs shape the realm of life and identity. To passively ignore the role of the law, science, custom, and other social institutions in justifying and reinforcing these narratives is dangerous. We must not take them as natural facts but critically engage with them—something Crenshaw's metaphor fails to communicate.

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<sup>89</sup> *Ibid* at 261

<sup>90</sup> Michel Foucault, *The history of sexuality* (New York: Pantheon Books, 1978)

Leslie McCall's "anti-categorical critique of categorization" takes this notion even further, contending that identity classifications and, therefore, their intersections, are superficial.<sup>91</sup> While there is some value in recognizing that the symbols and imageries deployed to marginalize minorities are artificial, this perspective is perhaps too abstract to translate into legislation or praxis. As the consequences of these artificial symbols have genuine, tangible repercussions for the subaltern, they must be acknowledged. Black women's lives are shaped by the material consequences of these socially constructed symbols. Thus, societal institutions and political strategies of liberation alike cannot ignore the existence of these categories.

These conceptual critiques of Crenshaw's metaphor are worth bearing in mind when considering applications of intersectionality in the law. An existing pattern in Western legal systems, particularly in the field of discrimination law, is to fall into the trap of segregating different dimensions of an individual's identity. This endless dissecting of identity can be unproductive, even symptomatic of the legal system's failure to comprehend and address the coexisting oppressions. This very shortcoming of the American legal system is what motivated Crenshaw's work. However, the intersection metaphor fails to illustrate the complexity and fluidity of identity. There is a risk that institutionalizing intersectionality would only accentuate this concept feature rather than meaningfully grappling with the questions raised by Jordan-Zachery. Another potential issue that may arise from the law's integration into the law is that it would limit its ability to critically evaluate and further investigate its role in socially constructing identity categories. As Haney López explores in *White by Law: The Legal Construction of Race*,<sup>92</sup> courts have played an integral role in deciding and valorizing whiteness, notably by tying it to citizenship, as well as in determining who is the racial other.

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<sup>91</sup> McCall, *supra* note 5 at 1779

<sup>92</sup> Ian Haney López, *White by Law: The Legal Construction of Race*, 10<sup>th</sup> anniver. ed. (New York: NYU Press, 2006)

Using criteria such as language, skin color, national origin, facial features, culture, scientific opinions, ancestry, and, primordially, popular opinion, the law has continuously been deployed to shape and strengthen the racial order. Criticizing the law's role in this construction was an integral element of the CRC's intellectual project which become at risk. Joining a body that so integrally shapes how we understand our and others' identities may hinder intersectionality's ability and commitment to understanding identity's fluidity. Still, the metaphor remains of unquestionable value through its placement of Black women at the axis of the intersection. Making Black women's marginalization and the historical oppression they have faced the focal point of the metaphor compels the reader to look at where they are situated. Through their centrality, we gain better comprehension of all the external factors contributing to Black women's oppression. The introduction of this idea into the existing system forces us to face the question of who is currently deemed worthy of social and legal recognition and may potentially undermine the dominant one-size-fits-all approach typically adopted by courts worldwide. Thus, we will study the potential benefits of intersectional law.

## II- Intersectional discrimination law: a middle ground towards progress?

### A- Deployments of intersectional frameworks in law

As Crenshaw adroitly demonstrated, the law systematically fails to adequately correct multiple-axis inequality. Correcting this dysfunction is of the utmost importance. Still, one cannot help but wonder if the law's chronic dismissal and further marginalizing of oppressed people is an error, or the legal system operating as intended. To determine if the application of intersectional analysis and methodological changes can result in profound systematic change, we will focus on developments in the field of discrimination law since Crenshaw's articles.

This assessment will help us better apprehend how deeply engrained the law's oppressive tendencies are and gauge its liberatory potential.

The approach of the American courts to layered forms of discrimination has progressed since the now infamous *DeGraffenreid*. While still falling short of an intersectional process, the legal system has opened itself to the possibility of multiple discriminations coinciding. The legal system's first meaningful recognition of the complex form of discrimination Black women face was in the 1980 *Jefferies v. Harris County Community Action Association*<sup>93</sup> case. Dafro Jeffries, a Black woman, sued her employer, arguing she has suffered an interactive form of discrimination due to her being an older Black woman when applying for a promotion. Although dismissed, Jefferies's claim remains a turning point for American discrimination law as the court recognized the potential for "combined claims of race and sex discrimination."<sup>94</sup> This conclusion was reached through the court's application and scrutinizing of the "sex-plus" analysis, which established that employers could not discriminate based on "sex plus a 'neutral factor.'" <sup>95</sup> Introduced in the 1971 Supreme Court case *Phillips v. Martin Marietta Corp.* (MMC),<sup>96</sup> where MMC had been discriminating against women with children, this analysis recognized that Phillips status as a mother shaped the sex discrimination she experienced. Although an improvement from the complete dismissal in *DeGraffenreid* and its binary framework, this analysis still had problematic ramifications. Overly simplistic, the "sex-plus" method failed to capture how various discriminations do not add up but make a novel, distinct form of oppression. It is also inadequate when dealing with cases where sex and race discrimination meet. While the court's application of this framework in *Jefferies* lead to the

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<sup>93</sup> *Jefferies v. Harris County Community Action Association* (1977) 425 F Supp 1208 (United States District Court for the Southern District of Texas)

<sup>94</sup> Mary Elizabeth Powell "The Claims of Women of Color Under Title VII: the Interaction of Race and Gender" (1996) 26:2 *Golden Gate University Law Review* at 419

<sup>95</sup> *Ibid* at 420

<sup>96</sup> *Phillips v. Martin Marietta Corporation* 400 U.S. 542 (1971)

recognition that “discrimination against black females can exist even in the absence of discrimination against black men or white women,”<sup>97</sup> it still subtly further marginalizes Black women by relegating their race to a neutral factor. By framing Black women's race as a “neutral factor” that can be added to a sex discrimination claim, the law reinforces the pre-existing notion that a Black women's race is subordinate to their gender. Black women's race and sex cannot be isolated from one another, let alone hierarchized. It is diminutive and inaccurate for the law to see Black women simply as a subset of women. Another shortcoming of this “sex-plus” approach is the limiting claimants to only one “neutral factor.” This analysis failed to capture the complexity of identity and discrimination by limiting plaintiffs to one neutral factor. A more technical defect of the *Phillips* framework was its equating race to other neutral factors not explicitly protected by Title VII.

Recognitions of intersectional discrimination in American law culminated with the *Lam v. University of Hawaii*,<sup>98</sup> with the courts thankfully moving past the “sex-plus” analysis. When Vietnamese French Professor Maivan Clech Lam initially alleged she had been discriminated against due to her race, sex, and national origin, she was dismissed. It was not until her appeal in 1998 that the courts overturned the initial decision, recognizing that “Asian women are subjected to...disadvantages that are not shared by Asian men or white women.”<sup>99</sup> A turning point in American discrimination law, *Lam* marked the legal system’s first official recognition of intersectional experiences. The Ninth Circuit’s explicit recognition of compound discrimination and critique of the impoverished single-criterion approach signaled a new era for anti-discrimination law. Although a testament to the benefits of an intersectional approach to discrimination, the case is also an indicator of the extent of intersectionality’s potential

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<sup>97</sup> *Jefferies*, *supra* note 90 at [23]-[24]

<sup>98</sup> *Lam v. University of Hawaii* (1998) 40 F 3d 1551 (United States Court of Appeals, 9<sup>th</sup> Circuit)

<sup>99</sup> *Ibid* at [17]

within the legal system. While undeniably useful in cases like these, the intersectional methodology remains scarcely used, arguably not to the full extent of its potential.

With Crenshaw's work reaching a global audience, legal intersectionality successfully spread across jurisdictions. This expansion is illustrated by the Supreme Court of India explicitly commenting on the importance of conducting intersectional analyses in the recent *Patan Jamal Vali v. State of Andhra Pradesh* case.<sup>100</sup> The historic recognition that it is “imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination”<sup>101</sup> is a clear victory for intersectional law. In *Patan Jamal Vali*, the intersectional analysis was not limited to race and gender but also accounted for her social caste, disability, and age. It is extremely promising for the field that India's highest instance court demonstrate such readiness to utilize intersectional analyses to their full extent. Perhaps the greatest testament to intersectionality's newfound global appeal on the legal stage was when the UN “recognized the importance of examining the intersection of multiple forms of discrimination, including their root causes from a gender perspective.”<sup>102</sup> The direct endorsement of intersectionality in the first paragraph of the resolution on women's human rights signalled a willingness to address the complex forms of discrimination experienced by women in multiple marginalized communities. Still, practical steps must accompany these recognitions for them to have a substantive impact. Although symbolically powerful, some may argue that the UN's explicit commitment to recognizing intersectional experiences in 2002 was somewhat superficial. Concretely, little has been done to challenge the conditions allowing intersectional oppressions to ensue. Simply acknowledging intersectionality is not enough.

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<sup>100</sup> *Patan Jamal Vali v. State of Andhra Pradesh* AIR 2021 SC 2090

<sup>101</sup> *Ibid* at [12]

<sup>102</sup> UN Commission on Human Rights, On April 23<sup>rd</sup>, 2002, 58<sup>th</sup> Sess, Resolution E/CN.4/2002/L.59

## B- The plateauing of legal intersectionality

Despite these successes, many jurisdictions show hesitancy to call upon intersectional frameworks. The Canadian Supreme Court case *Fraser v. AG*<sup>103</sup> offers an interesting insight into the factors contributing to the courts' reluctance to adopt a substantive equality framework in discrimination cases despite ultimately opting for such an approach. In this case, the claimants, Ms Fraser, Ms Pilgrim, and Ms Fox, three retired Royal Canadian Mounted Police officers, participated in a work-sharing program allowing its members to share the responsibilities of a full-time position. Like most of the program's participants, the three women had joined the program to balance childcare responsibilities with their, as the RCMP had refused their request to work part-time. After starting the program, the women discovered that the job-sharing scheme did not allow those taking part to "buy back" pension credit, unlike employees working one full-time position. The claimants challenged their employer, stating that the RCMP treated those part of the job-sharing program, primarily women with children, unfairly compared to other employees. Still, the RCMP refused to modify its pension policy. Upon this dismissal, the claimants filed an application accusing the RCMP of breaching s.15(1) of the Canadian Charter of Rights and Freedoms,<sup>104</sup> arguing that the exclusionary policy's disproportionate impact on women with children constituted an act of discrimination. Both the Federal Court and the Federal Court of Appeal ruled that no discrimination had occurred, stating that the disadvantage faced by the applicants was not caused by them being women or having children but because of their own choices. This was overruled by the Supreme Court, with most Justices rejecting the idea that caregiving is always a choice and recognizing that

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<sup>103</sup> *Fraser v. AG (Canada)* 2020 SCC 28

<sup>104</sup> *Canadian Charter of Rights and Freedoms*, s.15(1), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11



due to systemic inequality, it is usually taken on by women. Although the rule may have appeared neutral, much like in *DeGraffenreid*,<sup>105</sup> it was founded on antiquated, sexist ideas that, when enacted into policy, allowed disproportionately adversely impacted members of a protected identity category.

Although the Court decided to grant the appeal, Justices Brown, Rowe, and Côté's dissents illustrate the judiciary's unwillingness to modify their traditional approach for a more intersectional perspective. In her dissent, Justice Côté argued that not only was disproportionate impact insufficient to meet the standards of a s.15(1) breach, but that this was not a sex-based issue but a caregiving one.<sup>106</sup> As the claim was on behalf of mothers and did not encompass the experience of childless women, a disparity based on sex could not be proved. Disregarding that caretaking responsibilities have historically fallen predominantly on women and insisting on the distinction between disadvantaged caregivers and women, Côté posited that, as caregiving is not an explicitly protected identity under s.15(1), the Court must reject the women's application. Despite admitting this was not rational, the Justice maintained that it was not the judiciary's role but the legislature's to correct this. Similarly, Justices Brown and Rowe's dissent argued that it was the government's role to address the pre-existing inequalities that lead to women being primary caregivers.<sup>107</sup> Despite being conscious of the disproportionate impact of the pension plan on women, their defence of the notion that substantive discrimination cannot be reduced to historical disadvantage and that the Supreme Court had no role to play in achieving substantive gender justice is a testament to the shortcoming of the old-fashioned, single-axis simplistic approach to identity in discrimination cases.

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<sup>105</sup> *DeGraffenreid*, *supra* note 23

<sup>106</sup> *Fraser*, *supra* note 103 at para 231-244

<sup>107</sup> *Ibid*, at para 140

Another example of judicial skepticism regarding intersectional approaches to discrimination is the UK case of *Bahl v. The Law Society and Other*.<sup>108</sup> Despite taking place nearly three decades post *DeGraffenreid*, the English court's ratio echoes that of its American predecessor in its stern rejection of compound discrimination claims. The facts of the case are as follows: after having worked for The Law Society (TLS) for several years, Ms Bahl alleged discriminatory behaviors within TLS pushed her to file for resignation. Comparing her treatment to that of a hypothetical white man in her position, Ms Bahl convinced first-instance judges that the defendants "would have not treated a white person or a man less favourably."<sup>109</sup> Reversing what would have been a historical case upon appeal, Gibson LJ notably commented that he found the logic of the first ruling "puzzling."<sup>110</sup> Although recognizing that discrimination on both grounds of sex and race was possible, Elias LJ firmly declared that claims of multiple discriminations must be considered and evidenced independently. This was the case in *Nwoke v. Governmental Legal Service and Civil Service Commissioner*,<sup>111</sup> where the courts deployed an additive analysis to demonstrate that the Nigerian claimant had experienced sex and race discrimination when seeking employment.

While acknowledging that individuals may be discriminated against in multiple ways at once, this additive approach fails to capture the dialogic nature of these subjugations. The ways in which forms of oppression interact to create a unique, distinct kind of discrimination is not captured in this additive approach. *Bahl*'s unequivocal rejection of an intersectional approach cemented the dominant, rigid, single-axis model used in anti-discrimination law in the UK. This method was later cemented in the Equality Act 2010, with s.14 stating: "A person (A)

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<sup>108</sup> *Bahl v. The Law Society and Other* [2004] EWCA Civ 1070

<sup>109</sup> *Ibid* at [135]

<sup>110</sup> *Ibid* at [136]

<sup>111</sup> *Nwoke v. Governmental Legal Service and Civil Service Commissioner* (1996) 28 EOR 6

discriminates against another (B) if, because of the combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share those characteristics.” Thankfully, the Act does not demand claimants to produce independent evidence for each protected characteristic contributing to the discrimination, a net improvement on the additive approach described in *Bahl* and *Nwoke*. Still, this analysis does not capture the cooperative nature of compound discriminations. Furthermore, as Iyiola Solanke highlights, “the idea of a ‘combination prevents any shift of perspective: it does not change the way anti-discrimination law sees- there is no alternative experienced centered.”<sup>112</sup> By using white male experiences as the standard for what is the norm, the additive approach indirectly reinforces their dominant status in society. Failing to engage more deeply with the hierarchal structures at the origins of social oppression, the UK anti-discrimination law is far from intersectional. It is also worth noting that s.14 and its additive methodology are a last-resort solution rather than the norm in discrimination cases.<sup>113</sup> Thus, the UK still prevalently relies on an inadequate single-axis model to discrimination.

Sadly, the UK’s reluctance to adopt a more intersectional model and failure to address greater systemic change is the dominant trend on the global legal stage. With most jurisdictions favoring a single-axis approach, or an additive approach which still does not capture how something new emerges from multiple forms of prejudices, intersectionality’s introduction to the legal world has known only a mitigated success. With its most visible achievements being its explicit recognition by powerful bodies such as the UN or the EU, the intersectional framework posited by Crenshaw has done little to improve the lives of subalterns materially.

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<sup>112</sup> Iyiola Solanke, *Discrimination as Stigma: A Theory of Anti-Discrimination Law* (London: Bloomsbury Publishing, 2016) at 174

<sup>113</sup> Government Equalities Office (2009) “Peers Briefing” 15

Atrey argues that to remedy this stagnancy, we must reimagine the field of anti-discrimination entirely through an intersectional lens.

Astonished at the fact “that a body of law specifically designed to address inequality has missed the worst kind of inequalities which are constituted and compounded by their interaction seems astonishing,”<sup>114</sup> Atrey proposes an entirely new approach to counter the plateauing of legal intersectionality. She argues that rather than awkwardly attempting to fit intersectionality into a system centered around the flawed single-axis model, the anti-discrimination law must adapt. Likening the field to “[A] complex apparatus of interconnected cogwheels,”<sup>115</sup> due to the interconnectedness of the cogs, Atrey asserts that “[...] each of the concepts and tools invoked in discrimination law doctrine will have to be individually recalibrated with respect to intersectionality for a claim of intersectional discrimination to succeed.”<sup>116</sup> The redesigning of the different co-dependent “cogs” of anti-discrimination law using an intersectional lens would facilitate tackling the flaws of the single-axis and additive approaches. At long last, the law would acknowledge that combined discriminations do not simply add up but rather engender a unique, synergetic form of discrimination. Additionally, this reimagination would create an opportunity to put those at society’s margins at the center of anti-discrimination policies and laws. Cisgendered heterosexual, non-disabled, white, middle-class men would no longer be the pseudo-neutral standard. Already, this application of intersectionality would be much more in line with the CRC’s vision.

Although promising, Atrey's vision fails to address many structural societal issues. Perhaps we should consider whether the law can meaningfully assist in furthering intersectional goals.

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<sup>114</sup> *Ibid* at 31

<sup>115</sup> Atrey, *supra* note 29 at 207

<sup>116</sup> *Ibid*

For now, intersectionality remains solely a sub-category of discrimination law. While its use as a different lens through which to study more layered discrimination cases or as an innovative alternative methodology in courtrooms are positive first steps, intersectionality is yet to be deployed to its full potential. Additionally, there exists a risk that the terminology of intersectionality would be resorted to simply for its symbolic value. This is not only limiting to the concept but potentially dangerous. The co-option of intersectional symbols for virtue signaling to perpetuate Western narratives of virtue and superiority would be the directly contradict the CRC's philosophy and go against intersectionality's *raison-d'être*.

### III- The short sightedness of legal intersectionality-lite

#### A- A limiting compromise

It is an observable fact that the law's current dominant single-axis or additive approach to discrimination does not meet the needs of those relying on it. Characterized by its profound misunderstanding of the complexities of discrimination, the legal system must urgently adapt. By limiting intersectionality to discrimination law, we prevent it from examining the roots of a profoundly unjust system in need of reimagining. Whilst integrating intersectionality and complexifying the law's understanding of identity and oppression is a possible positive start to addressing social injustice, it is only the tip of the iceberg. For the material conditions of the subalterns' lives to change for the better, societal structures and hierarchies must be challenged. Still, whether the law can cause this systemic change is debatable, as it is a powerful actor in maintaining the *status quo*. Perhaps the inclusion of intersectionality within the law stifles the concept's liberatory potential. As Janet Halley warns, "transforming a[n] idea into a law can

prematurely settle productive conflicts [...] about what worlds to imagine.”<sup>117</sup> Her exploration of the co-opting of feminist ideas as they entered the realm of law and governance in *Governance feminism* rings almost prophetic when applied to intersectionality. As intersectionality enters the legal arsenal, it must bereave many of its characteristics which define it as a revolutionary, liberatory project. Kerry Rittich describes this similar filtering of the emancipatory of feminist ideas as the paradigm became institutionalized as “selective engagements.”<sup>118</sup> We must not confine intersectionality to the legal system for its full potential to be revealed and to prevent it from being filtered beyond recognition.

While it may be argued that any recognition of what once an “outsider” idea and its incorporation into the law must be positive, this is not the case for intersectionality. Although the improvement of anti-discrimination law is a commendable and necessary, this has come at too great a cost. The legal system’s adoption of intersectional terminology has allowed for a redefining of the concept. This impoverished version of intersectionality, intersectionality-lite, confines the paradigm to a descriptive or analytical tool to study marginalized people. As Jordan-Zachery highlights, “[a]s the concept of intersectionality has advanced, [...] the [...] liberation framework- has been lost.”<sup>119</sup> What once was “a challenge to existing power structures,”<sup>120</sup> has become a somewhat superficial solution. Less threatening to the *status quo*, intersectionality-lite is not a middle-ground towards progress it may seem. By only selecting the most palatable aspects of intersectionality and using the “virtuous” connotations of the term to signal progress, it has become a weapon to prevent that progress.

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<sup>117</sup> Janet E. Halley, *Governance Feminism: an introduction* (Minneapolis: University of Minnesota Press, 2018) at xi

<sup>118</sup> Kerry Rittich, “The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social” (2004) 1:26 *Michigan Journal of International* at 223

<sup>119</sup> Jordan-Zachery, *supra* note 40 at 256

<sup>120</sup> *Ibid* at 262

Crenshaw and Atrey's aspirations for legal intersectionality limit it to doing the work of improvements. Rather than deploying it to challenge the axioms of power that are the judiciary and the legislative branches of government, intersectionality-lite limits itself to relatively small-scale change. Relegating intersectionality to a sub-category of discrimination law robs it of its liberatory potential as it must work within the state's rigid, hierarchal, oppressive frameworks. Intersectionality-lite scale differs significantly from the CRC's intersectionality. While the former is concerned with attributing remedies in discrimination cases, the other seeks to emancipate the subaltern. Improving some parameters of a deeply flawed system is quite a step down for a project which initially sought “the liberation of all oppressed peoples necessitat[ing] the destruction of the political-economic systems of capitalism and imperialism as well as patriarchy.”<sup>121</sup> Intersectionality's primary aspiration was to redesign social structures entirely. While intersectionality-lite correcting manifestations of systemic failure is not harmful in and of itself, it does not tackle the root of the issue and arguably weakens intersectionality. As Greene warned in “Race in the Twenty-First Century: Equality Through Law?,”<sup>122</sup> while the legal assault on segregation by constitutional lawyers such as Charles Hamilton Houston and weakening of oppressive legal order by outsiders from the inside may seem like the only possible route towards progress, “it is not only possible that if so confined, meaningful equality may not be achieved, but also that the very legitimacy of alternate avenues to racial justice may be compromised.”<sup>123</sup> A band-aid where profound change is needed, intersectionality-lite is simply too big a compromise. In the words of Houston himself, legal intersectionality is “not an end in itself, but simply [...] a means of [...] probing in the courts,

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<sup>121</sup> Akasha (Gloria T.) Hull, Patricia Bell Scott, and Barbara Smith (eds.), *supra* note 2 at 16

<sup>122</sup> Greene, *supra* note 27

<sup>123</sup> *Ibid* at 300

which are products of the existing system, how far the existing system will permit the exercise of freedom before it clamps down.”<sup>124</sup>

### B- The teleology of law and its dangers

Embracing intersectionality-lite presupposes the law itself is the solution to social injustice. Rather than questioning the law’s underpinning principles, intersectionality-lite accepts them as facts. Uncritically embracing the notion that law may be corrected into perfection further reifies state apparatuses. Creating the illusion that these institutions are not manufactured constructs but inevitable facts of nature, the cultural hegemony offers a compelling teleological narrative that we must question. As Joanne Conaghan eloquently explains, the depiction of injustice as a “historical aberration, a mistake to be corrected within the context of a conception of law as an essentially benign and progressive institution, albeit, as the product of human design, prone to error,” is “a teleological idea of law in pursuit of itself, as moving inexorably towards its own self-realization as a neutral, objective, and fundamentally rational mechanism for the resolution of disputes in a just and civilized society.”<sup>125</sup> Indeed, “law is a product of human agency,”<sup>126</sup> not a fact of nature whose constraints we must work within. By joining the legal system, the range of possible intersectional thought significantly narrows. With law’s frameworks limiting what we perceive to be possible routes towards emancipation, our theorizing becomes warped. Evaluating whether the law itself is an obstacle to emancipating the subaltern is difficult from within the legal system. We must take a step back, outside of the law, to evaluate all possible alternatives to further intersectionality’s liberatory project. Most importantly, we cannot become blind to the ideological foundations of the law.

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<sup>124</sup> Genna Rae McNeil, *Groundwork* (Philadelphia: University of Pennsylvania, 1983) at xvii quoting statement of Charles H. Houston (circa Dec. 1949)

<sup>125</sup> Joanne Conaghan, *Law and Gender*, (Oxford: Oxford University Press, 2013) at 78

<sup>126</sup> John Borrows, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61:4 *McGill Law Journal* at 799



In the words of Lorde: “The master’s tools will never dismantle the master’s house.”<sup>127</sup> The confining of intersectionality into the law restricts the breadth of its theorizing and potential for emancipatory praxis. The very institution that Crenshaw sought to make intersectionality a part of was the subject of the CRC’s adamant critique. Perhaps the radical progress that the Collective dreamed of cannot be accessed through the means proposed by Crenshaw as they may be antithetical to one another. As Lorde explained in relation to epistemic liberation, unquestioned allegiance to oppressive systems and their tools only allows for the narrowest perimeters for change.<sup>128</sup> We cannot dismiss the possibility that our current understanding of what constitutes law will never be a suitable means to reach an intersectional end. Intersectionality must not simply be an afterthought of the legal system but a pillar of social organization. Authentic intersectional law would require the complete reimagination of the method and shape of legal structures and a rejection of the capitalist, heterosexist, patriarchal, imperialist foundations of the current system. Changing the content of the law is not sufficient for such a thing to be possible.

The examination of intersectionality’s modern era and remodeling into intersectionality-lite through its introduction into the legal world has revealed many things about the paradigm. Firstly, it has become apparent that Crenshaw’s deployment of intersectionality was motivated by the legal system’s inadequacy in tackling compound discrimination cases. Much like in the 19<sup>th</sup>-century and the 1960s social justice movements, Black women and their needs were ignored. The law’s misunderstanding of the synergetic nature of combined oppressions left

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<sup>127</sup> Lorde, *supra* note 30 at 91

<sup>128</sup> *Ibid* at 90

Black women and other multiply marginalized individuals with no legal remedy after enduring instances of discrimination. By not granting the same protection and rights to Black women and other oppressed individuals, the legal system solidified their status as second-class citizens. Inspired by the CRC and Critical Race Theory, Crenshaw devised her famous road intersection metaphor and proposed including intersectional analyses and frameworks into the law to combat this phenomenon.

Secondly, although legal intersectionality experienced some successes worldwide, responses to it have been mixed. Despite its use in the Indian Supreme Court case *Patan Jamal Vali* and the UN's explicit recognition of the concept, legal intersectionality remains scarcely implemented. Additionally, it has been primarily deployed for symbolic value rather than to orchestrate practical change. To remedy this, Atrey suggests re-designing every element of the field of anti-discrimination law. Positing that the clumsy shoehorning of intersectionality into law's rigid, single-axis, white-man-centric frameworks is the reason for its floundering in the last three decades, she suggests making intersectionality central to anti-discrimination law rather than an annex to it. While this would improve the legal system, this approach fails to tap into intersectionality's full revolutionary potential. Although a promising short-term solution to allow for victims of compound discrimination to receive compensation, this perspective does not address deeper systemic problems, leading us to a third revelation.

As the legal system subsumed intersectionality, what was once a revolutionary idea has had to become a filtered shadow of itself. No longer a challenge to oppressive hierarchies seeking to liberate the subaltern through a reimagining of society, intersectionality would now be limited to a sub-category of law. Restricted to an analytical framework, the scale of change intersectionality could effect has become incredibly limited. This appropriated version of

intersectionality, or intersectionality-lite, merely seeks to remedy symptoms of systemic inequality rather than systemic injustice itself. A dilution of the CRC's vision, intersectionality-lite has been used to signal virtue from the dominant oppressive system of governance and has lost its liberatory aim. Rather than drawing on the law's strength to further its emancipatory goals, it has been appropriated by the state to reinforce the *status quo*. Additionally, once part of the legal arsenal, intersectionality's theorizing potential narrows. Its integration into the law is concomitant with the endorsement of teleological myths centring any path to a supposedly brighter future around the law and other dominant axioms of power. Legal frameworks are incompatible with revolutionary theorizing, limiting the breadth of thought possible and preventing the consideration of the entire realm of possibilities. It is inherent to the law that it will not foster critical thoughts that reject its hierarchies or methods or see beyond them.

This exploration's final revelation is that we must step outside the law for the intersectional project to progress. The liberatory political agenda leading to the subaltern's liberation will necessarily reject the patriarchy, racism, heterosexism, and other systems of domination. However, this is not possible within the law, as its role is to construct and maintain these structures. For substantial change to be possible, we must reject intersectionality-lite as it facilitates the appropriation of intersectional thought without advancing its emancipatory agenda.

Having seen how intersectionality's integration into law led to its corruption, we will now analyze why the spread of intersectionality-lite into academia and broader societal discourse is cause for worry. While law constrained the concept, academic discourses are stretching it beyond recognition. Opportunistically misused to further non-intersectional political ideals, there is no denying that intersectionality is in crisis.

### Chapter 3

#### Intersectionality in crisis: delegitimization, appropriation and hope

Upon studying intersectional thought's emergence in resistant theorizing in the 19th century, and development in its modern legal era into intersectionality-lite, we will now examine intersectionality's crisis. Much like in 1989, intersectionality is at a crux in its history. Embraced by the academic world since Crenshaw's article, intersectionality's deployments are often inconsistent and opportunistic. While intersectional thought's newfound theoretical momentum benefits its “awareness project,”<sup>129</sup> this has once more not been without a cost. On account of it becoming a “serious academic field,” intersectionality has been refashioned and arguably, entirely hollowed of any liberatory resistant substance.

The weakening and tampering of intersectionality have taken two forms: firstly, it is being delegitimized through the gradual obscuring of its meaning, where academic citations of the idea, rather than evolving coherently and directionally, have become inconsistent and esoteric. Secondly, it is in the process of being progressively co-opted to further narratives and projects strengthening oppressive social hierarchies. Risking liberatory obsolescence and appropriation, intersectionality must adapt and return to its roots if the subaltern is ever to be liberated.

We will begin by exploring how academia has undermined intersectionality as a field and fostered the definitional dilemma we have previously analyzed. The frivolous and excessive citing of intersectionality, where it is used to describe contradicting theories, misused, and misrepresented, has clouded intersectionality's meaning and purpose. The lack of coherence in

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<sup>129</sup> Hancock, *supra* note 18 at 12

the concept's theoretical evolution weakens the intersectional project, dispersing research efforts. This, combined with the delegitimization of intersectionality's methods, notably the rejection of subjective forms of knowledge as well as less hierarchal discussions to theorize, has contributed to intersectionality's denaturing. As Gessen highlights,<sup>130</sup> this misrepresentation and increased elusiveness may be an intentional strategy to protect the cultural hegemony.

Following our examination of the purposeful delegitimization of the paradigm, we will focus on academia's corruption and appropriation of intersectionality. We will study the gradual process by which academia has gained control over intersectional narratives by excluding the subaltern from intersectional theorizing. From being a space where the subaltern could represent themselves, intersectionality as an academic discipline now re-presents the subaltern. Having gained control of intersectional narratives and terminology, academic institutions, socio-political, and cultural mechanisms may use the concept to their advantage, notably to further capitalistic and political aims. We will then proceed with an in-depth analysis of the capitalist appropriation of intersectionality to ideologically soften the transition into a new era of capitalism. Drawing on the works of Fraser, Boltanski, and Chiapello we will study the co-option of intersectionality into a political marketing tool for virtue signaling, a superficial symbol, and a purchasable product.

Intersectionality is at risk of becoming too incoherent and esoteric to be of any substantive use, in addition to being inaccessible to the subaltern, and appropriated to further oppressive aims. As a potential solution for this crisis, we will discuss how by returning to its resistant roots, re-centring around the subaltern, and strengthening its ties to praxis, intersectionality

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<sup>130</sup> Gessen, *supra* note 15

may remain loyal to its *raison-d'être*. Intersectionality's revolutionary liberatory potential is not yet lost.

## I- Delegitimization and liberatory obsolescence

### A. Joining academic structures

Despite being met with apprehension by the legal world, scholars worldwide have displayed extreme interest in intersectional thought since its entrance on the academic stage in 1989. From generating “[...] heated theoretical debates throughout the US and Europe” to “becoming a standard topic in undergraduate courses, graduate seminars and conferences in the field of Women’s studies,”<sup>131</sup> intersectionality has become a household name both in universities and in political discussions. With Crenshaw’s “Mapping the margins” being cited over 15500 times<sup>132</sup> and “Demarginalizing the Intersection of Race and Sex” over 11000 times,<sup>133</sup> it is undeniable that once was an outsider idea has now flourished into a dynamic, bustling field of academia. The recent flow of novel perspectives and analyses on intersectionality has allowed for the emergence of what some have described as “a constellation of knowledge projects that change in relation to one another in tandem with changes in the interpretive communities that advance them.”<sup>134</sup> With many hailing intersectionality’s introduction to academia as an incredible success, intersectional scholarship has gained legitimacy through academic institutionalization. This recognition by university bodies of the importance of intersectional

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<sup>131</sup> Kathy Davis “Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful” (2008) 9:1 *Feminist Theory* at 68

<sup>132</sup> Semantic Scholar, <<https://www.semanticscholar.org/paper/Mapping-the-margins%3A-intersectionality%2C-identity-of-Crenshaw/3dcbf9de9d08c7e321a48bb801825326c1df52ab#citing-papers>>

<sup>133</sup> Semantic Scholar, <<https://www.semanticscholar.org/paper/Demarginalizing-the-Intersection-of-Race-and-Sex%3A-A-Crenshaw/d1ce882b69d380acae44f56ad3e3d28b65fba7a8>>

<sup>134</sup> Collins, *supra* note 6 at 5

insights, combined with the general public's surge in interest in social justice since the rise of the Black Lives Matter in 2020, has put intersectional theorizing at the forefront of recent academic, cultural, and socio-political discourse.

While this rise in popularity has done wonders for intersectionality's visibility project, with more individuals than ever attuned to the poor treatment of members of marginalized groups, this has come at a cost. Indeed, this exponential growth and propulsion into mainstream political discourse have come with the clouding of intersectionality's meaning. Although a degree of uncertainty is inevitable for any growing concept, with academics such as Kathy Davis arguing it is illustrative of a field's dynamism and potential for growth, the ambiguity surrounding intersectionality's nature and aim is unhabitual. With the characteristics of intersectional thought as described by CRC no longer reflected in intersectionality-lite and scholars deploying the term in almost any way imaginable, it has become near-impossible to clearly define intersectionality or its parameters. Although the argument that intersectionality's "lack of clear-cut definition or even specific parameters has enabled it to be drawn upon in nearly any context of inquiry,"<sup>135</sup> and is thus a positive, has some value, the extent of this phenomenon where even dominant intersectional scholars cannot define the term is cause for worry. As previously discussed, intersectionality is facing a definitional dilemma. Hancock attributes the confusion surrounding intersectionality since becoming a trending topic in academia to it having become a meme.<sup>136</sup> A meme, Richard Dawkins explains, is any information transmitted from one individual to another through imitation.<sup>137</sup> A negative consequence of this process of rapid, repetitive copying and pasting of knowledge from one individual to another is that the information itself becomes slightly altered with each imitation.

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<sup>135</sup> Davis, *supra* note 131 at 77

<sup>136</sup> Hancock, *supra* note 18 at 17

<sup>137</sup> *Ibid* at 18

As a result, the information, in this case, intersectionality, “shape-shifts so much as to no longer being recognizable.”<sup>138</sup> With intersectionality’s roots becoming increasingly elusive, it appears that the paradigm’s rise in popularity in academia and mainstream discourse may not benefit the intersectional project, but rather hinder it.

Scholarship plays a crucial role in the development of intersectionality; thus, it cannot be separated from its theoretical component. From informing the acts of praxis necessary to analyzing the structures and mechanisms that allow for the oppression of the subaltern, theory is an intrinsic component to intersectionality. However, its institutionalization into academic bodies such as universities, much like with the legal system, is changing intersectionality drastically. Their structural differences are partly responsible for intersectionality’s transformation within academic bodies. The highly hierarchical structure of academia seems at odds with the collaborative, horizontal structure of intersectional knowledge production. This incongruency would suggest that the university’s structure is unsuitable for fostering intersectional thought. Intersectionality does not naturally fit the formal and informal codes that accompany academic bodies’ rigid structures. While gaining legitimacy, visibility, and access to resources by entering the academic world, both intersectional thought and the scholars themselves have had to adapt to the rules and frameworks of the university. Although a degree of adaptation would not necessarily be problematic, academic institutions’ inherent colonial, patriarchal, and capitalistic nature also conflicts with intersectional tenets. Indeed, the CRCS makes clear that intersectional thought seeks to dismantle the dominant white-washed, patriarchal, heteronormative discourses which facilitate harm to the subaltern. However, as we will further explore, academic bodies play an intrinsic role in creating and maintaining these narratives. Considering these factors, we must bear in mind Collins warning that: “Those who

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<sup>138</sup> *Ibid* at 17



get to tell intersectionality's story wield epistemic power over intersectionality's history, borders, core questions, and goals. On some level, subordinated groups know that epistemology has never been neutral, and that epistemic power is part of how domination operates."<sup>139</sup> Thus, it is critical we remain wary of the transformations intersectional thought has undergone within academia, as these shifts may be symptomatic of a larger strategy of delegitimization. With intersectional theorizing having evolved in all directions, and its narratives no longer within its control, the concept has escaped its founders and those it sought to aid. It is probable academic bodies may have some interests in delegitimizing intersectionality or remodelling it into a shadow of itself, where it cannot threaten the status quo and its underlying narratives. This muddling and rewriting of intersectionality are crucial components of the mechanism which has allowed for the emergence of intersectionality-lite but are not intersectionality-lite itself. Symptomatic of this dangerous transition, these trends make intersectionality's CRC roots ever more elusive, contributing to its denaturing and misapplication both academically and in courts.

#### B- The delegitimization of subjective knowledge and spirit of scholarship as imagined by CRC

When the CRC formed, it aspired to create a collaborative environment for Black women to theorize, drawing from their lived experiences, as no such space existed for them in society. As discussed in chapter 1, an intrinsic element to intersectionality's analytical endeavor were its roots in subjective reflections and challenging what powerful bodies chose to recognize as legitimate knowledge. However, this process of intersectional knowledge production, based on "friendship networks, community and a rich Black women's culture where none had existed before," transformed once it was absorbed by academic institutions. The modern Western university's conceptualization of valid, serious knowledge production was and remains very

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<sup>139</sup> Collins, *supra* note 10 at 122

different to the CRC's views on the matter. Universities' highly hierarchic, competitive, and capitalistic nature, necessary to reach two of their central aims of profit and prestige, does not foster a spirit of collaboration. Ladened with complex power dynamics, it appears that, often, academia favors the philosophy of survival of the fittest over friendship networks. Even more abstract dimensions of academia, notably the dialogues between scholars, operate around a hierarchy of authority. The politics of publications, funding, tenure, and much more, do not create a framework where authentic human connections occur as easily and genuinely. This starkly contrasts with intersectional scholarship, which centers around human connection. The dialogues sprouting from vulnerability, curiosity, and hope required for intersectional thinking can only occur when the dialogic playing field is even.

More than supressing an atmosphere which stimulates intersectional scholarship, academia actively rejects and delegitimizes the intersectional methodology of knowledge production. A distant theoretical descendent of the Frankfurt School of Critical Theory, a sociological and philosophical movement which rejected the idea of knowledge production being free of ideological value and rejected the reification of empiricism as well as positivism within dominant bodies of knowledge production, intersectional methodology embraced subjectivity. Realizing the inherently personal, historical, and socio-political situatedness of knowledge, the CRC grounded its reflections in the personal. This was motivated partly to finally vocalize the struggles and experiences of Black women, which had been ignored until then, but also to express their rejection of the academic belief that objective knowledge was superior and more legitimate than subjective knowledge. However, once subsumed by the dominant bodies responsible for knowledge production, intersectionality's methodology was delegitized. With universities labelling any theorizing grounded in subjective experience as lesser, intersectionality decreasingly relied on narratives, parables, and personal experiences.

Intersectional scholarship's articulations heighten this incongruency, often failing (or rather refusing) to abide by academic codes of knowledge transmission.

Academic bodies' pre-conceived notion that knowledge must not be only objective but entirely rational and void of emotion was also incompatible with intersectionality. By being rooted in the subaltern's painful lived experience, intersectional scholarship and its formulations embraced vulnerability and emotions. Fueled by anger, sadness, hope, joy, and love, the CRC and its ancestors argued that their emotions deepened their insights rather than clouded their judgment. It is partly this solid tie for personal passions which motivated their unique style of theorizing. Foundational intersectional scholar Lorde recognized the power of emotions to inform cognition, writing many poems to communicate her thoughts. While intersectional thinkers recognized that emotions were a unique but powerful method of communicating information, touching listeners and readers in ways objective data could not, universities strictly rejected this premise. With academic codes of formality and language now obstructing intersectional theorizing, this critical and one-of-a-kind aspect of intersectional thought is lost.

These structural discrepancies and ideological incompatibilities, combined with delegitimizing intersectional forms of knowledge production, have changed the content, nature, tone, and shape of intersectional dialogues. Still, despite the constraints imposed on intersectionality in the shape of codes and frameworks, there are more articles than ever on intersectionality. With many core aspects of intersectional theorizing delegitimized, intersectionality's methodology has taken an entirely new shape and is now almost unrecognizable. It is not intersectionality as imagined by the CRC that is blossoming, but yet another manifestation of intersectionality-lite. The sacrifices and transformations

intersectionality has had to undergo to become a serious academic field have contributed to its denaturalization. As per Collins' warning, by becoming institutionalized, those in power have now gained control over intersectionality's methodology, borders, and aims. Wielding its epistemic power over intersectionality, academia has changed the standards for what constitutes valid intersectional scholarship and what the concept is entirely. Sadly, its methodology and expressions are not the only thing intersectionality has had to renounce in the name of becoming a serious academic field.

### C- Loss of revolutionary substance: distancing intersectional thought from praxis

The denaturing of intersectionality into the ever-popular intersectionality-lite is not only illustrated by the alterations to its methodology, formulation, and content, but also by the ever-growing gap between intersectional theorizing and praxis.<sup>140</sup> No longer produced to create concrete tactics for the liberation of the subaltern, intersectionality-lite's ties to social justice weaken seemingly by the day. Often framed as a positive evolution, indicative of intersectionality's maturing discourse, intersectionality's decreasing commitment to social justice is a direct by-product of universities' commitment to pseudo-objectivity. Supposedly, separating intersectional thought from political ends will improve the quality of the theoretical analysis produced. The increased separation between the field and its subject matter would improve the quality of research produced, apparently gained from having more perspective on the matter from afar. Once more, this contradicts intersectionality's tenets. As previously discussed, intersectionality rejected the idea that anyone could exist outside of the oppressive interlocking structures of power creating the conditions for Black women's oppression. Studying from above and renouncing social justice would not make intersectional thought more

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<sup>140</sup> *Ibid* at 273

objective; it would simply mean it is now studying subjugation from a biased place of power. As Collins highlights, in intersectionality, “[s]cholarship informs praxis, the latter being foundation to the development of the former.”<sup>141</sup> The symbiotic relationship of cognition and praxis is at the core of intersectionality itself. When separated, intersectionality disintegrates, losing its *raison d’être*.

When Stewart, Truth, Cooper, and CRC analyzed the dialogic nature of oppression, it was not for the sake of the intellectual exercise but to inform a political agenda of liberation. Borne out of the frustration and outrage at the marginalization of Black women, intersectionality emerged to transform a society hostile to the subaltern. As Lorde states in no uncertain terms: “survival is not an academic skill.”<sup>142</sup> Before transforming into intersectionality-lite, intersectionality was a revolutionary project critical of oppressive axioms of power and seeking to dismantle them and the ideologies at their foundation. The CRCS explicitly states its very concrete goal in the chapter “What We Believe.” The chapter explains the CRC’s aim of ending capitalism, imperialism, and patriarchal power structures to liberate oppressed people.<sup>143</sup> Intersectionality’s history, combined with these assertions and the CRCS deployment of terminology such as “plan of action”<sup>144</sup> make it clear that intersectionality is more than an analytical endeavor. To treat it as such is to profoundly misunderstand or mischaracterize it- as is currently being done in academic dialogue. Intersectionality’s growth and increased visibility are for nothing, if not advancing the liberation of the subaltern. The ever-expanding number of papers and books written on intersectionality-lite are not actual victories if they do not contribute to reaching the objective of changing the material conditions of the subaltern’s life.

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<sup>141</sup> Collins, *supra* note 6 at 2

<sup>142</sup> Lorde, *supra* note 30 at 92

<sup>143</sup> Keeanga-Yamahtta, *supra* note 3 at 15

<sup>144</sup> *Ibid* at 7

Cognition is not an aim in and of itself when dealing with liberation and must be followed by praxis.<sup>145</sup>

The reduction of intersectionality into an exercise of logic does not only wholly mischaracterize it but severs the concept from its *raison-d'être*. The loss of purpose that has come with the diluting of intersectionality into intersectionality-lite may be a source for intersectionality's definitional dilemma. With nothing to strive for, the scholarship has scattered in all directions. The gradual removal of each of intersectionality's crucial elements and replacement with the structures and frameworks of academia has led to the creation of a Frankenstein's monster: its mismatched components clashing with what originally existed while also hollowed of its core. While intersectionality-lite thrives, intersectionality's golden age seems to have faded away.

#### D- Protecting the cultural hegemony

The denaturing of intersectionality into intersectionality-lite by academic institutions is illustrative and of the crisis it is currently facing. Although this transformation might have been the unfortunate by-product of shoehorning a unique outsider idea into universities' rigid frameworks in the hopes of furthering its visibility project, it is also possible that this shift was not accidental but orchestrated. The delegitimization of intersectional methodology, its reliance on the subjective, its ties to social justice, and the growing number of misrepresentations may be part of a broader strategy to incapacitate intersectionality. In *Surviving Autocracy*,<sup>146</sup> Gessen explores how the elites controlling knowledge production misrepresent and deform the meaning of concepts threatening the dominant regime. By clouding the meaning of these

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<sup>145</sup> Freire, *supra* note 71

<sup>146</sup> Gessen, *supra* note 15

paradigms, delegitimizing them in the public eye, and stigmatizing them, ideas once threatening to the cultural hegemony are rendered harmless. With intersectionality-lite's emergence and the beginning of its intersectionality's definitional crisis coinciding with its institutionalization, the CRC's idea may be a victim of the process described by Gessen. Opponents of social change and social justice are creative in developing new exclusion strategies. Rather than outwardly attacking ideas threatening the *status quo*, they dismantle these ideas and movements from within.

## II- Corruption and appropriation

### A- Gradual exclusion of the subaltern: from representation to re-presentation

In addition to its complete misrepresentation and delegitimization of intersectionality, intersectionality-lite has been appropriated by academic bodies and larger socio-political discourses to further possibly nefarious aims. From harming the subaltern to justifying Western imperialism, intersectionality-lite is not only the embodiment intersectionality's lost opportunity but also concrete threat to those at the bottom of the social order.

The most flagrant manifestation of intersectionality's appropriation is the gradual exclusion of Black women and other people of color from intersectional theorizing. By restricting access to intersectional theorizing spaces to academics and delegitimizing knowledge rooted in personal experiences, academia has taken intersectionality away from the subaltern and made it its own. Indeed, scholarship within the university is an activity reserved for academics or individuals with a certain amount of privilege. The codes, language, status, and resources necessary to enter the academic space, let alone have a voice within them, are things that, by definition, the subaltern cannot access. Rooting intersectional theorizing in personal narratives

and using alternative knowledge transmission methods without academic language and codes was a conscious choice to allow the subaltern to voice their thoughts on their terms. The delegitimization and abandonment of these unorthodox, so-called unacademic ways of theorizing silences the subaltern. Having had their voice taken from them and excluded from intersectional theorizing space, the subaltern can no longer speak. This silencing, emblematic of the subversion and dilution of intersectional thought, is ironically everything the CRC stood against. A field originally devoted to diversity is becoming observably whiter in all branches of intersectional research with each passing day. From the omission and silencing of Black women in intersectional political sciences<sup>147</sup> to authors of color's perspectives being overlooked in civil rights law scholarship,<sup>148</sup> a clear pattern of exclusion has emerged. As the work Nikol Alexander-Floyd demonstrates, upon inspection of intersectionality's citation trends, it is indisputable that the academic field is becoming increasingly white.<sup>149</sup>

Intersectional theorizing once strictly abided by the maxim: "Always ally yourself with those on the bottom, on the margins, and at the periphery of the centers of power. And in doing so, you will land yourself at the very center of some of the most important struggles of our society and our history."<sup>150</sup> Rather than centering around the subaltern, intersectionality-lite observes them from above. No longer the fruit of the expression and analysis of the direct lived experiences of those at the "bottom of the well," intersectional academia reimagines what the experience, needs, and identity of the subaltern are. Using their purportedly external perspective on interlocking systems of oppression to justify the exclusion of the subaltern,

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<sup>147</sup> Julia Jordan-Zachery, "Now You See Me, Now You Don't: My Political Fight Against the Invisibility of Black Women in Intersectionality Research" (2013) 1:1 *Politics, Groups, and Identities*

<sup>148</sup> Richard Delgado, "Imperial Scholar: Reflection on a Review of Civil Rights Literature" (1986) 132:3 *University of Pennsylvania Law Review*

<sup>149</sup> Nikol G. Alexander Floyd, "Disappearing Acts: Reclaiming Intersectionality in the Social Sciences in Post-Black Feminist Era" (2012) 24:1 *Feminist Formations*

<sup>150</sup> Keeanga-Yamahtta, *supra* note 3 at 105



those in power have capitalized on the myth that the theorizing of victims of is of lesser value due to their lack of objectivity. Reinforcing the erroneous idea that one can exist outside of structures of power and therefore write more objectively on the matter is a duplicitous excuse to silence the subaltern and legitimize the voice of those above them in the social hierarchy. Thanks to this myth, the privileged academic may have the luxury of believing they exist outside of racism when they benefit from it and may actively facilitate it at times. Still, due to the cultural hegemony, they will not perceive their privilege, nor question their experience. Their subjectivity, not framed as such, is never held against them. However, for those without socio-political power, as Frantz Fanon remarks that “objectivity is always directed at [them].”<sup>151</sup> As we previously explored, these delegitimizing strategies facilitate the appropriation of intersectionality and co-option into intersectionality-lite.

One thing is clear, intersectionality-lite speaks for the subaltern rather than allowing them a voice. Although the CRC sought to create a space where the subaltern could speak and be heard, intersectionality-lite entirely forgoes this dimension of the intersectional project. This shift fittingly illustrates the distinction between what Spivak refers to as *Vertretung*, as in “representation,” and *Darstellung*, for “re-presentation.”<sup>152</sup> Rather than remaining a platform where the subaltern could represent themselves and their needs, intersectional thought is now “constructing the Other simply as an object of knowledge, leaving out the real Others.”<sup>153</sup> From source of knowledge to object of knowledge, the subaltern is further dehumanized.

By relegating the subaltern to a distant object of study, their experiences become increasingly abstract and theoretical to those studying them. The pseudo-objective re-

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<sup>151</sup> Frantz Fanon, *The Wretched of the Earth* (New York: Grove/Atlantic, 1963) at 77

<sup>152</sup> Spivak, *supra* note 29 at 33

<sup>153</sup> *Ibid* at 259

presentation of the subaltern's subjugation, devoid of any emotion, dangerously disconnects intersectional theorizing from reality. This dehumanization of the subaltern, but also intersectionality-lite, is concerning. As Jordan-Zachery reminds us, "intersectionality is something I live every day." Intersectionality and its ideological ramifications are not abstract ideas and cannot be treated as such. Writing on the emotional strain of "doing" intersectionality within academia, notably during her research on AIDS's impact on black women, the Jordan-Zachery laments: "What makes it so [painfully difficult] is that I am talking about real women, [...] who are dying." The cold, supposedly objective, and rational look of intersectionality-lite over the subaltern not only fail to do justice to their experiences but further marginalizes them by discussing their suffering as if they were not real people. This distancing from the concrete suffering of vulnerable people should not be striven for or glorified. Without compassion, we fail to understand all dimensions of the subaltern's experience and reinforce the idea that they are an "other" whose suffering is only abstract and not equally worthy of sympathy.

These re-presentations are not only dehumanizing, but inaccurate, and often self-serving. Edward Said explores the impossibility of a veracious re-presentation and the utility of these erroneous re-presentations for those in power in his groundbreaking *Orientalism*.<sup>154</sup> The 1978 book offers an in-depth analysis of orientalism, or as Said describes it, the "Western style for dominating, restructuring, and having authority over the Orient."<sup>155</sup> Through his work, he explores how through a complex process of imitating, depicting, and recounting an idea of the Orient, the West has manufactured a carefully crafted narrative justifying their colonial rule over the geographical area and its people. Using academic discourse, art, and literature, the Orient is re-presented and essentialized as static and underdeveloped. Such narratives provided

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<sup>154</sup> Edward W. Said, *Orientalism* (London: Penguin Books, 2019)

<sup>155</sup> *Ibid* at 2

a rationalization for Western rule, where non-westerners were incapable of self-governance independently but, with the assistance of the virtuous West and its modern, civilized frameworks, may also thrive.<sup>156</sup> As Said explains, “there is no such thing as a delivered presence, but a re-presence, or a representation. The value, efficacy, strength, [and] apparent veracity of a written statement about the Orient therefore relies very little, and cannot instrumentally depend, on the Orient as such.”<sup>157</sup> Much like in the case of the subaltern within intersectionality-lite, any re-presentation is reliant on the authentic subject being “excluded, displaced, made supererogatory.”<sup>158</sup> The epistemic power wielded by those in power allows the strategic reimagining of those under them to favor their ideological and political aims. Supporting this analysis, Spivak argues that it is intrinsic to Western academic thinking to produce narratives which will justify and support Western economic interests.<sup>159</sup> Positing that knowledge production is never innocent and will inherently reflect its producers’ interests, Spivak reminds us that the subaltern’s re-presentations are carefully constructed. Thus, the object of study will be whatever those in power need it to be to further their interest. Worryingly, intersectional thought has shifted from being attuned to this process, with Lorde highlighting that the institutionalized rejection of difference in America was fueled by West’s profit economy being dependent on the existence of “surplus people,”<sup>160</sup> to intersectionality-lite taking part in this process. Neither accurate nor objective, we must critically examine the narratives produced by intersectionality-lite surrounding the subaltern and be wary of their ideological content.

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<sup>156</sup> *Ibid* at 36

<sup>157</sup> *Ibid* at 21

<sup>158</sup> *Ibid*

<sup>159</sup> Spivak, *supra* note 29

<sup>160</sup> Lorde, *supra* note 30 at 91

## B- Capitalist appropriations: selling intersectionality-lite

As we progress in our discussion of intersectionality-lite, it is worth noting that the paradigm both generates narratives which facilitate the co-option and appropriation of intersectionality and is itself an appropriated, corrupted version of it. Borrowing Fraser's turn of phrase, intersectionality light is the "uncanny double"<sup>161</sup> of intersectionality. It is both a victim and a perpetrator of what Miranda Fricker refers to as epistemic injustice.<sup>162</sup> Drawing from Cooper and Spivak, Fricker's book, *Epistemic Injustice: Power and the Ethics of Knowing*, distinguishes between two kinds of epistemic injustices: testimonial and hermeneutical. The former relates to injustices regarding the credibility of an individual's word.<sup>163</sup> Testimonial injustices occur when a hearer will be less likely to deem a speaker's statement as credible due to "identity prejudice,"<sup>164</sup> meaning due to the speaker's race, gender, sexuality, disability, or, more generally, identity. This kind of unfairness is often reliant on and accompanied by hermeneutical injustices, where a subject's experience is misunderstood, perhaps even by the subject itself, as their experiences are depicted inaccurately in academia and other spheres. The century-long exclusion of marginalized people from academic spaces and the silencing of the subaltern translates into the absence of appropriate language and frameworks to make sense of their experiences and thoughts. This process of hermeneutical marginalization, where those without power "participate unequally in the practices through which social meaning are generated,"<sup>165</sup> is one intersectionality-lite that has both been subjected to and performed. The delegitimization of intersectional methodology, the exclusion of the subaltern from modern intersectional thinking spaces, and the corruption of intersectional

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<sup>161</sup> Fraser, *supra* note 32 at 387

<sup>162</sup> Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (New York: Oxford University Press, 2007) at 1

<sup>163</sup> *Ibid* at 4

<sup>164</sup> *Ibid* at 4

<sup>165</sup> *Ibid* at 6

tenets were forms of epistemic violence. The repackaging of intersectional language and history into intersectionality-lite provides the means for the concept to now inflict epistemic injustice. With intersectionality-lite producing re-presentations of the subaltern legitimizing the *status quo* and Western domination, while being more “marketable,” this “strange shadowy version,”<sup>166</sup> of intersectionality has co-opted by capitalism.

Boltanski and Chiapello’s *The New Spirit of Capitalism*<sup>167</sup> demonstrates how “[c]apitalism [...] has always relied on critiques of the *status quo* to alert it to dangers in any untrammelled development of its current forms, and to discover the antidotes required to neutralize opposition to the system and increase the level of profitability within it.”<sup>168</sup> The brilliant critique illustrates that it is capitalism’s ability to absorb and transform dissenting voices to facilitate its transition into a new era that makes it so pervasive and dangerous. The capitalistic *modus operandi* of appropriating dissenting voices to strengthen and prolong itself is further explored by Fraser in “Feminism, Capitalism, and the Cunning of History,” relating to second-wave feminist ideas. Fraser’s examination offers a worrying insight into the future of intersectionality-lite if current trends continue. Her article traces the corrupting process of second-wave feminist ideas, notably its critique of the paternal welfare state and patriarchal notions of the ideal wage earner. Although both were commendable in principle, once these ideas grew in popularity, appealing to women of every social class, and entered the realm of governance, they were corrupted and used to soften the transition into the neo-liberalist era of capitalism. She highlights that the feminist call to challenge the dominant belief that men were better suited to join the workforce, rather than lead to a challenging of the patriarchy itself, compelled women of all backgrounds to pour into the labor market like never before. While at first glance a positive shift, this

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<sup>166</sup> Fraser, *supra* note 34 at 387

<sup>167</sup> Boltanski and Chiapello, *supra* note 36

<sup>168</sup> Sebastian Budgen, “A New ‘Spirit of Capitalism’” (2000) 1:138 *New Left Review* at 151

supplemented capitalist operations with more workers than ever, allowing for its growth. As

Fraser explains:

[T]he feminist romance attracts women at both ends of the social spectrum: at one end, the female cadres off the professional middle classes, determined to crack the glass ceiling; at the other end, the female temps, part-timers, low-wage service workers and microcredit borrowers, seeking not only income and material security, but also dignity, self-betterment and liberation from traditional authority. At both ends, the dream of women's emancipation is harnessed to the engine of capitalist accumulation. <sup>169</sup>

Another manifestation of the corrupting of second-wave feminist ideas was Bill Clinton's triangulation of feminist critiques of the paternal welfare state and its stigmatization of the poor. Appropriating the language of the feminist movement, Clinton capitalized on demands to change the existing system to introduce his plan to "end welfare as we know it." However, rather than challenging the sexist and classicist dimensions of the welfare system as feminists initially desired, this was used to the pass neo-liberal policies such as abolishing the Federal entitlement to income support. <sup>170</sup> Despite the movement's laudable intentions, capitalistic appropriation mechanisms manipulated the feminist narrative to ease the ideological transition to neoliberalism, and the passing of policies harmful to women and vulnerable communities. We must learn from history and protect intersectionality from losing its meaning. The rise of intersectionality-lite signals that this process is already in motion. We will explore capitalistic utilizations of intersectionality-lite to determine the extent of intersectionality's co-option and determine whether it is still salvageable or doomed to usher in the next capitalist era.

The appropriation of intersectionality-lite by capitalistic structures begins with its absorption into the dominant power structure. Before deploying intersectionality-lite advantageously, capitalistic mechanisms must infiltrate intersectional narratives. Having

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<sup>169</sup> *Ibid* at 110-111

<sup>170</sup> *Ibid* at 111

permeated all dimensions of its target, capitalism and its underpinning beliefs become tightly woven into its fabric. This complex process requires various power structures to work together, relying especially heavily on academic institutions. As capitalistic bodies themselves, universities play a crucial role in writing capitalistic undertones into the narratives they help forge. The epistemic power they wield, creates the conditions propitious for capitalistic appropriation. Pointing this epistemic power at intersectionality, academia has forged a new intersectional history. This carefully crafted narrative does not emphasize intersectionality's revolutionary dimensions or unequivocal challenge of the *status quo* but is compatible with bodies of power. This new intersectional history often begins in 1989, giving little credit or attention to the CRC or its predecessors.

The language used to describe intersectionality's emergence in this amended intersectional history is a small but telling example of capitalism seeping into the paradigm. An idea and turn of phrase almost inevitably employed in articles, lectures, and books discussing or even merely mentioning intersectionality, is the "coining" of intersectionality by Crenshaw in 1989. Used by Jordan-Zachery,<sup>171</sup> Davis,<sup>172</sup> Prins,<sup>173</sup> Atrey,<sup>174</sup> and many more, the expression has become a staple of almost any intersectional work. Although seemingly innocuous at first glance, the constant deployment of the term has troubling connotations. The use of "coining," and thus attribution of ownership of intersectionality to Crenshaw, introduces capitalist notions of proprietorship, as well as having colonial undertones. Intersectionality is the by-product of a cross-century, non-hierarchical collaboration process. Discussing its emergence in such a manner ignores a significant part of its history and denatures it entirely. The attribution of

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<sup>171</sup> Jordan-Zachery, *supra* note 40 at 255

<sup>172</sup> Davis, *supra* note 131 at 68

<sup>173</sup> Baukje Prins "Narrative Accounts of Origins: A Blind Spot in the Intersectional Approach?" (2006) 13:3 *European Journal of Women's Studies* at 278

<sup>174</sup> Atrey, *supra* note 29 at 27

intersectionality solely to Crenshaw participates in the very politics of knowledge production that the CRC critiqued and sought to dismantle.<sup>175</sup> As Collins astutely highlights, the purposeful deployment of the language of ownership “signal[s] power relations of domination that begin with discovery, move on to conquest, and end with ongoing pacification.”<sup>176</sup> The popularization of the term “coining” in intersectional narratives depicts Crenshaw as an “intrepid explorer,”<sup>177</sup> stumbling upon a *terra nullius* of knowledge and, naturally, gaining the title of it. A single word, omnipresent in intersectionality-lite’s scholarship, subtly introduces capitalist and colonial dimensions to a concept in opposition to both. Through the implementation of small, incremental changes, such as in the language used to tell the story of intersectionality, dominant structures of power imprint themselves on dissenting concepts and remodel them as their own. The reframing of intersectional history through a hierarchic, colonial, and capitalistic lens is a concerning yet fitting display of the mechanisms which make intersectionality-lite auspicious for opportunistic capitalist deployment. Tactfully reshaping how the concept is discussed and understood entirely makes it harmless to those in power. This alarming example reminds us that we must continually critically evaluate even our most basic assumptions when investigating a concept. Even the most anodyne detail, such as the language we have normalized using, may be laden with ideological significance.

Having been remodelled into intersectionality-lite and had its narrative rewritten, intersectionality and its tenets have been primed for co-option into the capitalistic arsenal. Once appropriated, one of intersectionality-lite’s primary uses is as a buzzword. Characterized by their prioritizing of “glamorous decorations”<sup>178</sup> over substance, buzzwords are terms which

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<sup>175</sup> Hancock, *supra* note 18 at 9

<sup>176</sup> Collins, *supra* note 10 at 122

<sup>177</sup> *Ibid*

<sup>178</sup> Andrea Cornwall, Karen Brock “What do buzzwords do for development policy? A critical look at ‘participation’, ‘empowerment’ and ‘poverty reduction’” (2005) 26:7 *Third World Quarterly* at 1043



have “[...] become fashionable in a particular field and [are] being used a lot by the media while having little or imprecise meaning but sounding impressive to outsiders.”<sup>179</sup> A tragic fate for what once was a revolutionary concept, intersectionality is being deployed in a myriad of opportunistic ways. Excluding the academic context, the buzzword “intersectionality” is deployed principally in three ways: in a political context, for virtue signaling, and in its commercialization.

With the rise of the MeToo and Black Lives Matter in the last five years, issues of race and gender are at the forefront of global socio-political discourse. Gaining momentum in 2017 in reaction to the accusations of sexual assault against film producer Harvey Weinstein, the MeToo movement sought to draw attention to the scale at which sexual assault occurred in our society and to denounce rape culture. Sexual assault survivor and activist Tarana Burke was the first to employ the phrase in 2006 to “empower through empathy”<sup>180</sup> survivors of sexual assault. Burke’s incremental role in the movement rarely goes acknowledged, continuing the century-long trend of feminist movements drawing on the work and efforts of Black women without giving them due credit. With public feminist spaces often dominated by white women, the MeToo movement falls into this pattern, with the majority white figureheads centering their politics around white women’s experience of sexual assault. Sparking protests worldwide, the feminist movement elicited strong reactions on all sides of the political spectrum. Three years later, a similar phenomenon occurred following the murder of George Floyd due to police brutality. Floyd’s murder sparked a public outcry over systemic racism and the all-too-common acts of violence perpetrated against Black people in America. Prompting monumental protests

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<sup>179</sup> Elena N. Malyuga, Wayne Rimmer, “Making sense of “buzzword” as a term through co-occurrences analysis” (2021) 7:6 *Heliyon* at 1

<sup>180</sup> Cristela Guerra, “Where did ‘Me Too’ come from? Activist Tarana Burke, long before hashtags” (2017) *Boston Globe* <<https://www.bostonglobe.com/lifestyle/2017/10/17/alyssa-milano-credits-activist-tarana-burke-with-founding-metoo-movement-years-ago/o2Jv29v6ljObkKPTPB9KGP/story.html>>

internationally, the movement expanded to critique not only police brutality but the over-policing of Black neighbourhoods, the disproportionate impact of the Covid-19 pandemic on Black Americans, the taking down of statues of historical figures having contributed to the subjugation of Black people, and much more. The rise of these social justice movements has coincided with increased uses of the term intersectionality in socio-political discourse.

Politicians and members of the public alike have begun liberally deploying the term, somewhat inaccurately. All sides of the political spectrum have been using “intersectionality” catch-all term when debating these highly polarizing issues. In the words of journalist Eleanor Robertson, intersectionality in the public political sphere has become “a Rorschach test, [...] specific enough for an outside observer to consider those who choose to use the word, whether to celebrate or disparage, as politically separated by only a few degrees.”<sup>181</sup> Extreme but not uncommon examples of the mischaracterizing of intersectionality from the right wing range from claims that intersectionality is a “new caste system,”<sup>182</sup> a “conspiracy of victimization,”<sup>183</sup> to even a new religion seeking to impose “a classic orthodoxy through which [...] all speech must be filtered. Its version of original sin is the power of some identity groups over others. To overcome this sin, you need first to confess, i.e., ‘check your privilege,’ and subsequently live your life and order your thoughts in a way that keeps this sin at bay.”<sup>184</sup> Using “intersectionality” as a stand-in term for any left-wing belief they wish to dismiss, conservatives are not the only ones guilty of exploiting the language of intersectionality.

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<sup>181</sup> Eleanor Robertson, “Intersectional-what? Feminism's problem with jargon is that any idiot can pick it up and have a go” (2017) *The Guardian* <<https://www.theguardian.com/world/2017/sep/30/intersectional-feminism-jargon>>

<sup>182</sup> Karen Lehrman Bloch, “Intersectionality: The New Caste System” (2019) *Jewish Journal* <<https://jewishjournal.com/commentary/columnist/294500/intersectionality-the-new-caste-system/>>

<sup>183</sup> Matthew Continanti, “The Battle of Woke Island” (2018) *National Review* <<https://www.nationalreview.com/2018/04/the-battle-of-woke-island/>>

<sup>184</sup> Andrew Sullivan, “Is Intersectionality a Religion?” (2017) *New York Magazine* <<https://nymag.com/intelligencer/2017/03/is-intersectionality-a-religion.html>>

As Robertson points out, Democratic candidates of the 2016 election were quick to incorporate the language of intersectionality into their marketing campaigns and electioneering.<sup>185</sup> An example of the cultural purchase of intersectionality as a tool for left-wing political pandering is a 2016 tweet by Hillary Clinton. In her post, Clinton writes, “We face a complex, intersectional set of challenges. We need solutions and real plans for all of them,”<sup>186</sup> above an image of a chaotic mind-map linking arbitrarily and without logic issues distantly relating to one another. In what can only be described as a half-hearted effort at evoking Crenshaw’s discussions of the interconnectedness of socio-political issues, Clinton perfectly encapsulates the empty, superficial, opportunistic use of intersectionality-lite in left-wing discourse. This clumsy attempt at signaling an awareness of diversity issues to potential electors not only rings hollow but is ironic considering the ideological and political content the Clinton campaign rested upon. “[A]n avatar of the *status quo*,”<sup>187</sup> Clinton’s politics, much like many other left-wing politicians globally, supposedly sought to address profound sociocultural components of oppression while still defending the economic, capitalist underpinnings of these systemic issues. The left-wing trend of appealing to identity politics and abusing the language of intersectionality for its marketability is equally common and encourages mischaracterizations. It is emblematic of intersectionality’s crisis that its vernacular be deployed in the public sphere by political groups aspiring to capitalize on the frustration and pain of the members of emerging social justice movements. No longer a tool for the development of liberatory strategies, it is becoming an instrument of strategic political marketing.

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<sup>185</sup> Robertson, *supra* note 181

<sup>186</sup> Hillary Clinton [@HillaryClinton] (2016, March 7<sup>th</sup>) Twitter  
<[https://twitter.com/HillaryClinton/status/706670045410299904?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweteembed%7Ctwterm%5E706670045410299904%7Ctwgr%5Efee9b2b60304729014837eacef942c55a562566e%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2017%2Fsep%2F30%2Fintersectional-feminism-jargon](https://twitter.com/HillaryClinton/status/706670045410299904?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweteembed%7Ctwterm%5E706670045410299904%7Ctwgr%5Efee9b2b60304729014837eacef942c55a562566e%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2017%2Fsep%2F30%2Fintersectional-feminism-jargon)>

<sup>187</sup> Robertson, *supra* note 181

The MeToo and Black Lives Matter movements signal a strong desire from members of the public to challenge the status quo and dismantle oppressive power structures. It is a cruel irony that rather than be utilized by those questioning the cultural hegemony, intersectionality is used by oppressors to quiet these movements. To restate the pattern Boltanski and Chiapello identified: capitalism has absorbed dissenting voices to better facilitate the transition into its next era. Emblematic of intersectionality's crisis, the semantic dilution of intersectionality into the marketable, and impotent intersectionality-lite, is used to create the illusion that systemic issues are being addressed and to ease social disquiet. As CRC member Barbara Smith states, "the bureaucratic [...] concept of 'diversity,' with its superficial goal of assuring that all the colours in the crayon box are visible,"<sup>188</sup> is not radical enough to elicit meaningful change. Bringing marginalized individuals into oppressive structures to signal that social progress is occurring is simply a tactic to divert attention from the structural change which needs to occur.

Turning our eye to the future, we will consider what will happen to intersectionality if its capitalist appropriation follows the same trend as the feminist movement. Following the appropriation of second-wave feminist ideas, as Fraser described, with third-wave feminism came the development of the neoliberal feminist subject. First employed by Catherine Rottenberg in 2013, "neoliberal feminism"<sup>189</sup> describes a feminism focused on women's self-empowerment. A product of capitalist narratives of rugged individualism and self-sufficiency, neoliberal feminist narratives suggested that we lived in a post-sexism era and that the only thing a woman needed to achieve the same as any man was confidence.<sup>190</sup> Repackaged and

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<sup>188</sup> Barbara Smith, *The Truth That Never Hurts: Writings on Race, Gender, and Freedom* (London: Rutgers University Press, 2000) at 181

<sup>189</sup> Catherine Rottenberg, "The Rise of Neoliberal Feminism" (2013) 28(3) *Cultural Studies*

<sup>190</sup> Sarah Banet-Weiser, *Empowered: Popular feminism and popular misogyny* (Durham: Duke University Press, 2018) at 96

sold as “girl power,” this kind of feminism “didn’t ask hard questions about privilege, class and race, and who gets to benefit from the “power” part of Girl Power in a deeply classist and racist society and who doesn’t.”<sup>191</sup> Indeed, neoliberal feminism encouraged women to join the ranks of power and capitalistic structures. By equating individual, capitalist success within the workforce and engagement in consumerism with liberation, “girl power” shone a positive light on capitalism. Characterized by its shifting of responsibility from systemic patriarchal power structures to the individual, “Girl Power was a product sold to young women in the form of merchandise, alongside the promise that the hard and necessary work of confronting structural inequalities and power imbalances needn’t happen.”<sup>192</sup> Not only did this appropriated version of feminist ideology only superficially address issues of sexism and distract from substantive change, but it also commercialized the idea of female liberation. Rather than disrupt the *status quo*, this feminism could “be more easily popularised, circulated and sold in the marketplace.”<sup>193</sup> Although intersectionality-lite has not reached such a level of corruption, its commercialization has already begun. With companies such as Amazon or Shein, renowned for exploiting their workers (many of whom poor women of colour) selling t-shirts stating that “the future is intersectional,” it appears capitalism has already deeply sunk its teeth into intersectionality-lite.

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<sup>191</sup> Kristine Ziwica, “The problem with Girl Power? Feminism isn’t meant to be fun” (2022) *The Sydney Morning Herald* <<https://www.smh.com.au/lifestyle/life-and-relationships/the-problem-with-girl-power-feminism-isn-t-meant-to-be-fun-20220824-p5bcek.html>>

<sup>192</sup> Kristine Ziwica, “The problem with Girl Power? Feminism isn’t meant to be fun” (2022) *The Sydney Morning Herald* <<https://www.smh.com.au/lifestyle/life-and-relationships/the-problem-with-girl-power-feminism-isn-t-meant-to-be-fun-20220824-p5bcek.html>>

<sup>193</sup> Catherine Rottenberg, “Feminists must reject neoliberalism if we want to sustain the MeToo movement” (2018) *Independent Digital News & Media* <<https://www.independent.co.uk/voices/neoliberalism-colonised-feminism-metoo-sheryl-sandberg-hollywood-a8367326.html>>

### III- Intersectionality as a radical act of hope: facing the crisis

#### A- Turning the tide

Intersectionality is at a turning point in its history. While its loss of *raison-d'être*, definitional crisis, delegitimization, and appropriation are certainly cause for concern, they are not insurmountable. Although it is currently being weaponized against social movements such as Black Lives Matter and to quiet social discontent, the existence of such movements demonstrates a widespread collective willingness to challenge and change the *status quo*. While this willingness exists, there is still hope for intersectionality. Still, as the capitalistic appropriation of intersectionality into intersectionality-lite is well under way, we must promptly face the obstacles intersectionality is facing head on and not turn away from the many challenges ahead. When the CRC first formed the tenets of what we now know as intersectionality, they asserted to be “ready for the lifetime of work and struggle before us.”<sup>194</sup> We must now follow in their steps and reclaim the intersectional project as the liberatory, subaltern-centric radical act of hope that it was.

To face this crisis, intersectionality must return to what it once was. Although a degree of evolution is standard for any movement through the decades, intersectionality's transformation into intersectionality-lite surpasses what may be considered normal or desirable growth. We must abandon the promises of intersectionality-lite as it is not the middle ground towards progress it presented itself as, but an intermediary step to total appropriation. The much-needed substantive changes the CRC and its predecessors dreamed of will never be achieved if on the terms of the elite. Joining the dominant axes of power which were the object of the CRC's

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<sup>194</sup> Keeanga-Yamahtta, *supra* note 3 at 17

critique, inevitably leads to the dilution of intersectional tenets. Furthermore, joining these bodies automatically excludes the subaltern from intersectionality. As the subaltern cannot be heard within the frameworks of these institutions or cannot access them, any engagement with these bodies excludes those who ought to be at the forefront of intersectional theorizing and praxis. Intersectionality's centering of those most at the margins of society in its methodology, theorizing process, and aims is perhaps what makes it such a revolutionary, promising endeavor. We must preserve this crucial aspect of intersectionality at all costs. To compromise on the subaltern's inclusion in intersectionality is to compromise the concept itself.

### B- Liberation through education

Much like the CRC did in 1977, we must center our liberation efforts around the subaltern if intersectionality is to become true to itself once more. As philosopher and educator Freire argues in his analysis of the role of education in reaffirming the humanity of oppressed communities in *Pedagogy of the Oppressed*, any movement seeking to liberate those most oppressed by society must ensure that the voices of those most vulnerable be most uplifted.<sup>195</sup> Indeed:

[...] the social experiences of members of hermeneutically marginalized groups are left inadequately conceptualized and so ill-understood, perhaps even by the subjects themselves; and/or attempts at communication made by such groups, where they do have an adequate grip on the content of they aim to convey, are not heard as rational owing to theory expressive style being inadequately understood.<sup>196</sup>

Freire posits that although education enables acts of epistemic violence and the subaltern's oppression, it is also the solution to social injustice. Freire further asserts that for scholarship to be an effective tool for liberation, cognition must draw from and inform praxis. Similar to

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<sup>195</sup> Freire, *supra* note 71

<sup>196</sup> Fricker, *supra* note 162 at 6-7

the CRC's belief in rooting theorizing in lived experiences to inform concrete political acts of liberation, this would also be a central dimension in correcting intersectionality's trajectory. The ever-growing gap between the scholarship of intersectionality and social justice exemplifies its gradual loss of identity and purpose. If the subaltern and the praxis elements of intersectionality are lost, intersectionality becomes a shadow of itself.

Although Freire's methodology of deploying teaching to liberate those most oppressed in society already complements the CRC's view on scholarship, a noteworthy addition to our strategy to recenter intersectionality would be the suggestion proposed by bell hooks in *Teaching to Transgress*.<sup>197</sup> In her work, hooks explores the paradoxical nature of teaching as a tool of liberation and domination. She emphasizes the importance of teaching with love, compassion, and how the act of learning is liberatory only if done through connection. Echoing Freire, who she directly responds to in the book, she explains that the creation of a liberatory feminist scholarship centered around the subaltern is of the utmost importance: "For in its production lies the hope of our liberation, in its production lies the possibility of naming all our pain of making all our hurt go away."<sup>198</sup> hooks' work reminds us of the importance of humanity and emotions in the intersectional project. Removing intersectionality's humanity through institutionalization was analogous to removing its heart. Intersectionality, as a theory and as a praxis, comes from the mind but also the heart. It is felt deeply and cannot be restricted to legal rules, well-formulated academic abstract principles, political catchphrases, or marketable products.

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<sup>197</sup> bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (New York: Routledge, 1994)

<sup>198</sup> *Ibid* at 75



## C- New horizons

Returning to intersectionality's roots by closing the current gap between intersectional scholarship and praxis, recentering theorizing around the subaltern, using its practice to feel and connect, as well as reprioritizing its *raison-d'être* of creating a theory which would lead to the liberation of those most oppressed, is only the first step. We must also change the shape of the paradigm. For intersectionality to survive the crisis it faces, it must adapt, notably through profound restructuring. The substantive systemic change intersectional thinkers hope to see in society must occur within the movement. As we embark upon our journey to redesign intersectionality, we must distance ourselves from existing power structures and the ideological frameworks they provide. Doing so will be an arduous task as the cultural hegemony englobes every dimension of society and shapes our perceptions in ways we may not be aware of.

By internalizing the perspectives of the dominant elite as natural facts of nature rather than ideologically motivated constructs, thinking has become limited. We must exercise skepticism and question even the most basic assumptions we have about the world surrounding us, theorizing, intersectionality, and the structures of power it challenges. Even the most seemingly obvious presumption may be laden with ideological suggestions. For example, when thinking about the law, we must not take the fact that a thing called "law" exists in the first place or that what we understand as law in the Western world is the only approach to legality. This is not to say that the law does not exist, but to highlight that no stone can be left unturned if we are to liberate ourselves from the dominant narratives imposed upon us from a young age. Decolonial scholar Valentin-Yves Mudimbe uses the image of an individual in an elevator to encapsulate how the stories imposed upon us limit the scope of our thoughts while maintaining the illusion of free thinking. He describes the

individual as standing in an elevator, pressing buttons to go up and down, giving them the illusion of choice, but never realizing an entire world exists outside the elevator. He continues, “In principle, a single gesture would be sufficient to stop the machine, get out, and rent an apartment or room; in sum, live and experience the reality of the world. But apparently, he does not understand that the initiative to escape belongs to him.”<sup>199</sup> The individual may feel like they are moving but are not cognizant of their entrapment. To escape the elevator or rather the prison, that is the cultural hegemony and finally become aware of “ways of being otherwise,”<sup>200</sup> we cannot take any intellectual shortcuts. The familiar, comfortable storylines deeply entrenched in our consciousness and shape our entire reality, are the first obstacle to overcome if we are to create a society where the subaltern may flourish. To do so, we must try and see every issue through fresh eyes. Emphasizing the importance of skepticism when theorizing, Terry Eagleton posits that:

Children make the best theorists, since they have not yet been educated into accepting our routine social practice as “natural” and so insist on posing to those practices the most embarrassingly general and fundamental questions, regarding them with a wondering estrangement which we adults have long forgotten. Since they do not yet grasp our social practices as inevitable, they do not see why we might not do things differently.<sup>201</sup>

It is with this child-like curiosity and excitement that we must tackle the challenge ahead of us in facing intersectionality’s crisis. Only then will we be able to imagine new horizons and create a society where true justice is possible.

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<sup>199</sup> Valentin-Yves Mudimbe *L’Autre Face de Royaume : Une Introduction à la Critique des Langages En Folie* (Lausanne : L’Age D’Homme, 1973) at 102

<sup>200</sup> Jayan Nayar “Some thoughts on the ‘(extra)ordinary’: on philosophy, coloniality and being other-wise” 42:1 *Alternatives: Global, Local, Political* at 25

<sup>201</sup> Terry Eagleton and Michael Payne, *The Significance of Theory: A Critical History* (Bucknell Lectures in literary theory, 1990) at 34

Intersectionality's growth in the academic and public sphere has played an intrinsic role in its delegitimization, denaturing, and eventual appropriation- still, there is hope for the intersectional project. The deceptively promising interest intersectionality received from scholars upon the publication of Crenshaw's article in 1989 marked the beginning of interactionalist-lite and the end of intersectionality as a revolutionary project of liberation connecting cognition and praxis. Although allowing the concept to reach a broader audience and gain legitimacy as a field, this came at the cost of changing its shape, content, and nature. To be recognized within the rigid, hierarchic structure of academia, intersectionality was divorced from praxis and forced to change its subaltern-centric methodology. Its original methodology delegitimized and having become decreasingly diverse; intersectionality lost all *raison-d'être*. This loss translated into the scholarship becoming increasingly chaotic and lacking structure, seeing as all the elements which fuelled and guided intersectionality had been effaced. Having hollowed the paradigm of all substance, dominant axes of power successfully made a once-threatening tool for liberation obsolete to pursue emancipatory objectives.

Academia's delegitimizing and rewriting of intersectionality had laid the ground for its appropriation. Now in control of intersectional narratives, the institutions controlling the realm of knowledge have relegated the subaltern from the source of theorizing to an object to be studied and re-presented. The hermeneutical marginalization process cemented the subaltern's state of subjugation and allowed those in power to deploy the language of diversity and inclusion to further ethnocentric narratives. Speaking on behalf of the reimagined subaltern, the dominant elite may push forward ideas reinforcing the *status quo* under the guise of pursuing social justice.

Following the trend almost prophetically foretold by Fraser, Boltanski, and Chiapello, intersectionality-lite was soon co-opted into the capitalist arsenal. Intersectionality-lite became a political marketing tool used inaccurately and opportunistically by politicians on all sides of the political spectrum. Entirely disconnected from its revolutionary components or the CRC's vision, the term "intersectionality" became a *façade* deployed to promote or undermine various political agendas. Only deployed for marketing, virtue signalling, or commercial purposes, intersectionality became a superficial symbol.

Experiencing the same fate as the feminist movement and its co-option into the marketable "girl power," intersectionality-lite is now becoming a purchasable product and lifestyle. Of course, like neoliberal feminism, this new era of intersectionality does not seek substantive structural change and can be bent to the will of the free market. An ideological softener ushering the way for the next era of capitalism, intersectionality-lite embodies everything the CRC stood against.

It is beyond doubt that intersectionality is in crisis. Although the CRC's dream may seem more distant and unobtainable than ever, the rise of social justice movements worldwide illustrates a global desire for deep systemic change. It may not be an easy task, but intersectionality may draw from this spirit of discontent and desire for change to reinvent itself once more. By returning to the paradigm's roots, bridging the existing gap between cognition and praxis, and reincluding the subaltern in theorizing spaces, intersectionality may reconnect with its *raison d'être*. Education must play a crucial role in this new intersectional era. Drawing from Freire and bell hooks' work, intersectional scholars must teach with love, compassion, and prioritize human connection in developing a liberatory agenda. Intersectionality's humanity was where its strength and potential truly lay. As we reimagine

the future of intersectionality outside of the institutions which have corrupted it, we must bear in mind that any level of compromise is a slippery slope to corruption and intersectionality-lite. The concept was and ought to remain an outsider idea which stands in opposition to the dominant axis of power. We must rebuild intersectionality from scratch, questioning and challenging even our most basic assumptions in order to create something genuinely new and revolutionary. Only once we have stepped out of Mudimbe's metaphorical elevator will new horizons arise for intersectionality.

## Conclusion

This thesis sought to demonstrate that intersectionality is in the process of being corrupted and its terminology appropriated to further political goals directly opposing its original aspirations. As the previous chapters have shown, this denaturing and appropriating process was long, and road to restore intersectionality to what it once was is an even longer one. Still, there is hope for the intersectional project. When deployed authentically, the unique insights into the layered nature of oppression, identity, and human connection intersectionality makes possible may pave the way towards a fairer, safer society for the subaltern. Despite the current crisis it is experiencing and the many challenges ahead, the intersectional dream of the CRC is still worth pursuing.

As intersectionality is currently facing a definitional dilemma, with its meaning becoming ever-more elusive due to its excessive and incoherent deployment, we began with a genealogy of intersectionality's early history to clarify its meaning. Through tracing the emergence of intersectional thought, its *raison d'être*, methodology, and philosophy became more distinguishable. Having gained a better understanding of the factors which fueled the surfacing of intersectional thought, notably Black women's chronic exclusion from social justice movements and mistreatment, we developed a better sense of intersectionality's ideological core. Our examination of 19th-century articulations of intersectional thought, from Stewart's first recognition of the dialogic nature of Black women's oppression and call to collaboration between marginalized groups to the CRC's development of a subaltern-centric methodology, created a reference point from which to compare intersectionality in its "true form" to what it has become. Our exploration ascertained a few key features of intersectionality. Its first characterizing element is its subaltern-centric approach. Having been developed in reaction to

the invisibility and silencing of Black women in society, this method centered around the most oppressed and rejected the trickle-down social justice intersectional subjects had been consigned to. Their theorizing rejected dominant narratives surrounding knowledge production and embraced subjective experiences as valid, legitimate sources of wisdom. Allowing the subaltern to speak on their terms, in their language, generated the conditions necessary for the expression of ideas and insights which had long gone unheard or unacknowledged. This bottom-up approach theorizing, centered around Black women's experiences, sought to inform a political agenda of liberation. Intersectional thought aimed to imagine and create a society where even the most marginalized individual would be treated with respect. Also characterized by its strong ties to praxis, intersectionality drew from and informed political acts of liberation. Lastly, the CRC and broader intersectional movement adopted a distinct collaborative, non-hierarchical approach to scholarship. To "do" intersectionality was to connect and see one another, to create bridges where none existed before, and to draw inspiration from differences to generate a new kind of scholarship and, one day, society.

Our second chapter examined intersectionality's entrance on the legal stage and the ramifications of this institutionalization. When in 1989, Crenshaw, inspired by the work of critical race scholars and Black feminists like the CRC, published her article "Demarginalizing the Intersection of Race and Sex," she changed the fate of intersectionality forever. As demonstrated by cases such as *DeGraffenreid* and *Moore*, the legal system inadequately dealt with discrimination claims on multiple grounds, furthering the marginalization of Black women in the process. Having examined how this exclusion may be the by-product of what Mills calls the racial contract, we studied how implementing intersectional frameworks may improve anti-discrimination law. An examination of the evolution of intersectionality in the field of anti-discrimination law in the last 30 years illustrated that despite some successes,

intersectional frameworks were seldom used. With the dominant single-axis and arithmetic additive approach failing to grasp the symbiotic relationship of race and gender discrimination, as well as failing to tackle deeper systemic issues, multiply marginalized people remained unequally protected by the law. To remedy this, Atrey suggests redesigning the field of anti-discrimination law entirely through an intersectional lens. Although a promising idea, it would still limit intersectionality's revolutionary potential, relegating it to a category of law. The outsider idea, once institutionalized, must be hollowed of much of its substance, transforming into a new, less radical version of itself: intersectionality-lite. This shadow of intersectionality, far less critical of the status quo and dominant axis of power, while having some short-term potential to improve anti-discrimination law, fails to see the larger picture at stake. Additionally, Crenshaw's and Atrey's hopes are based on erroneous pre-supposition that not only the distortion of bias could be removed from the law, but that if it was, the socioeconomic and legal mechanisms beneath would revert to a supposedly neutral state of impersonal justice where all are evenly impacted. The assumption that the law and other state instruments are solutions to problems of systemic injustice is dangerous and, thus, should not be entertained. Within the law, intersectionality is constrained and cannot imagine or enact the radical, structural change needed to create a society where the subaltern is treated with respect. Instead of treating the root of the issue, it treats a symptom of larger systemic failure. Furthermore, intersectionality's power of critique becomes limited within state apparatuses, as any solution imagined within state frameworks will rely on and reify these frameworks. If tied to the law, rather than being a framework which could radically reconceptualize entirely governmental and societal structures, intersectionality will become an anecdotal sub-section of discrimination law, robbed of revolutionary promise. To not limit intersectionality's long-term impact, we must keep the paradigm outside of dominant power structures.



Crenshaw's article not only launched intersectionality into the legal sphere but also propelled it to new levels of recognition in academia and mainstream political conversation. While highly beneficial to its visibility project, this rise in momentum has not been without its downsides. By joining yet another body of power it was initially critical of, intersectionality had to undergo significant transformation. Traditional academic bodies' rejection of subjective forms of knowledge, rigid hierarchal frameworks, informal codes, and competitiveness lead to the development of yet another warped version of intersectionality. Increasingly inaccessible to the subaltern, intersectionality went from offering a space for those without political and economic power to articulate their thoughts in their language to silencing them through the creation of alternative narratives about them. This process of hermeneutical marginalization and re-presentation of the subaltern, entirely contradictory to the CRC's philosophy, was accompanied by a gradual distancing of intersectional scholarship from praxis. Having lost almost all its defining characteristics, the concept and its vernacular became apt for appropriation. A shadow of its former self with ever-weakening ties to social justice, intersectionality became a buzzword deployed opportunistically. Following the same fate as second-wave feminist ideas and their corruption into the neo-liberal "girl power," what once was a revolutionary movement became a political marketing tool. Empty of any substantive, revolutionary meaning, the term was relegated to the status of virtue signaling symbol to appease social unrest in the face of systemic injustice. Now reinforcing capitalistic, imperialistic, patriarchal structures of power, intersectionality has lost its *raison-d'être*. It is undeniable that intersectionality is currently in crisis. However, it may be possible for its golden age to be ahead still. For this to be possible, we must take immediate action and reconnect with the paradigm's roots. Intersectionality must remain external to dominant power structures if it is ever to challenge them meaningfully. By reprioritizing subaltern perspectives, readopting a bottom-up approach to theorizing, closing the gap between intersectional

cognition and praxis, as well as reinstating the spirit of community into intersectionality, we may salvage the intersectional project.

This critical history of the rise and appropriation of intersectionality, through its genealogy of the idea, the study of its legal deployment, and critique of its appropriation as facilitated by academic bodies, not only attempted to deepen the reader's understanding of the idea but most importantly to show that intersectionality matters. If the delegitimizing and denaturing intersectionality into intersectionality-lite are so deplorable, it is only because the original paradigm held so much revolutionary potential for change. A reoccurring theme in this thesis was that we cannot afford compromise when it comes to social justice, but it is also important to note with this that we can also not afford to give up. Despite intersectionality being in crisis, from its definitional dilemma to capitalist appropriation, it can still be the space for connection, where the subaltern may represent themselves authentically and create a political agenda for their emancipation. Justice for those most marginalized is impossible within a capitalist, patriarchal, heterosexist, racist society, and intersectionality, with all its idiosyncrasies, may be our best option in creating a new, more egalitarian society.

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